

# **EXHIBIT**

**32**

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 IN THE UNITED STATES DISTRICT COURT<br/>2 DISTRICT OF MASSACHUSETTS<br/>3<br/>4 BRAUN GmbH, )<br/>5 Plaintiff, )<br/>6 -vs- ) Civil Action No.<br/>7 RAYOVAC CORPORATION, ) 03-CV-12428-WGY<br/>8 Defendant. )<br/>9<br/>10 The deposition of SAMUEL R. PHILLIPS, called<br/>11 by the Plaintiff for examination, taken pursuant to<br/>12 the Federal Rules of Civil Procedure of the United<br/>13 States District Courts pertaining to the taking of<br/>14 depositions, taken before CORINNE T. MARUT, C.S.R.<br/>15 No. 84-1968, a Certified Shorthand Reporter of the<br/>16 State of Illinois, at the offices of Kirkland &amp;<br/>17 Ellis LLP, Suite 5600, 200 East Randolph Drive,<br/>18 Chicago, Illinois, on the 30th day of August, A.D.<br/>19 2005, commencing at 8:53 a.m.<br/>20<br/>21<br/>22<br/>23<br/>24</p> | <p>Page 1<br/>1 (WHEREUPON, the witness was duly<br/>2 sworn.)<br/>3 SAMUEL R. PHILLIPS,<br/>4 called as a witness herein, having been first duly<br/>5 sworn, was examined and testified as follows:<br/>6 EXAMINATION<br/>7 BY MS. WENDLANDT:<br/>8 Q. Will you please state your name for the<br/>9 record.<br/>10 A. Samuel R. Phillips.<br/>11 Q. And what is your address?<br/>12 A. 5 Joaquin Road, Portola Valley,<br/>13 California, 94028.<br/>14 Q. Mr. Phillips, can you describe the<br/>15 circumstances under which you were retained for<br/>16 this case?<br/>17 A. I -- I received a call from a fellow<br/>18 that I work with that said that this case was<br/>19 coming and described the particulars and asked if<br/>20 it was something I could do. I thought it was, and<br/>21 he arranged a meeting for me to meet Mr. Shimota<br/>22 and Mr. Pals.<br/>23 Q. And who was this person with whom you<br/>24 work?</p> |
| <p>1 PRESENT:<br/>2 ROPES &amp; GRAY LLP,<br/>3 (One International Place,<br/>4 Boston, Massachusetts 02110-2624,<br/>5 617-951-7000), by:<br/>6 MS. DALILA ARGAEZ WENDLANDT,<br/>7 dwendlandt@ropesgray.com,<br/>8 appeared on behalf of the Plaintiff;<br/>9<br/>10 KIRKLAND &amp; ELLIS LLP,<br/>11 (200 East Randolph Drive,<br/>12 Chicago, Illinois 60601,<br/>13 312-861-2336), by:<br/>14 MR. JAMES A. SHIMOTA,<br/>15 jshimota@kirkland.com<br/>16 appeared on behalf of the Defendant.<br/>17<br/>18<br/>19<br/>20<br/>21 REPORTED BY: CORINNE T. MARUT, C.S.R. No. 84-1968<br/>22<br/>23<br/>24</p>   | <p>Page 2<br/>1 A. A little embarrassing because I work<br/>2 with several. I believe it's Teklicon. Yes. So,<br/>3 it would be -- I don't know who at Teklicon. Most<br/>4 likely Lee Eggerman.<br/>5 Q. And had you worked either with Mr. Pals<br/>6 or Mr. Shimota before?<br/>7 A. No.<br/>8 Q. How about Kirkland &amp; Ellis?<br/>9 A. No.<br/>10 Q. Had you done any expert -- served as an<br/>11 expert prior to this engagement for Rayovac<br/>12 Corporation?<br/>13 A. Yes.<br/>14 Q. In what capacity?<br/>15 A. As a testifying and consulting expert.<br/>16 Q. In what case?<br/>17 A. Well, there's a long list of them in my<br/>18 report.<br/>19 Q. Okay. How many hours would you say you<br/>20 have put into this case?<br/>21 A. I imagine about 100. About 100 I think.<br/>22 Q. Are you a native German speaker?<br/>23 A. No.<br/>24 Q. Have you received a degree in German</p>                                  |

1 (Pages 1 to 4)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 language?</p> <p>2 A. No.</p> <p>3 Q. Have you studied German?</p> <p>4 A. Yes.</p> <p>5 Q. Can you describe the studies that you've</p> <p>6 undertaken?</p> <p>7 A. Very, very brief. University of Houston</p> <p>8 when I lived there.</p> <p>9 Q. And what courses did you take in German?</p> <p>10 A. Just a course in elementary German.</p> <p>11 Q. One course?</p> <p>12 A. Yes.</p> <p>13 Q. German 101 type thing?</p> <p>14 A. Yeah.</p> <p>15 Q. Have you traveled --</p> <p>16 A. Gave me the knowledge of all the</p> <p>17 prepositions to take the data, which is not</p> <p>18 terribly useful.</p> <p>19 Q. The what?</p> <p>20 A. Prepositions to take the data. It's</p> <p>21 hard to conduct a conversation exclusively with</p> <p>22 those words.</p> <p>23 Q. Have you traveled in Germany?</p> <p>24 A. No.</p>   | Page 5 | <p>1 of your reports. Is this the list that you were</p> <p>2 speaking of?</p> <p>3 A. There is some misunderstanding. This is</p> <p>4 the first case I've ever worked on with Rayovac.</p> <p>5 Q. Oh, I see. Okay. And how about</p> <p>6 Remington?</p> <p>7 A. Likewise Remington, I've never worked</p> <p>8 for them.</p> <p>9 Q. And Spectrum Brands?</p> <p>10 A. And Spectrum Brands.</p> <p>11 Q. Just for the purposes of this deposition</p> <p>12 I will be referring to those three entities all as</p> <p>13 Rayovac Corporation?</p> <p>14 A. That's fine.</p> <p>15 Q. If there is some need to clarify, let me</p> <p>16 know.</p> <p>17 A. All right.</p> <p>18 Q. All right. Turning to this list of</p> <p>19 cases in which you've testified in the last four</p> <p>20 years, the first case is Weekend Warrior Trailers,</p> <p>21 Inc. vs. Thor California, Inc. Can you tell me the</p> <p>22 nature of your testimony in that case generally?</p> <p>23 A. The case involved recreational trailers,</p> <p>24 and I have testified on the matters relating to a</p> |
| <p>1 Q. Have you ever given expert testimony on</p> <p>2 the meaning of a particular German word?</p> <p>3 A. No.</p> <p>4 Q. I'm going to place before you three</p> <p>5 expert reports by you which I have previously</p> <p>6 labeled Phillips Exhibit 1, which is your first</p> <p>7 expert report; Phillips Exhibit 2, which is your</p> <p>8 second expert report; and Phillips Exhibit 3, which</p> <p>9 is your third expert report.</p> <p>10 I'm giving them to you now because I</p> <p>11 don't want to hold them anymore.</p> <p>12 I'm also going to place before you</p> <p>13 Phillips Exhibit 4, which is tabs 1, 2 and 3 and</p> <p>14 Exhibits 1 through 16 to your first expert report.</p> <p>15 If I can ask you to turn in Exhibit 4 to</p> <p>16 tab 1, which is your CV, dated June 12, 2004.</p> <p>17 A. Yes.</p> <p>18 Q. The last page of that CV is a list of</p> <p>19 cases in which you've testified in deposition or</p> <p>20 trial in the last four years. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. You had mentioned that you had</p> <p>23 previously served as an expert for Rayovac</p> <p>24 Corporation and that that would be included in one</p> | Page 6 | <p>1 bed in the trailer, a stowable bed.</p> <p>2 Q. I'm sorry. Stowable bed?</p> <p>3 A. S-t-o-w-a-b-l-e. My word. It may not</p> <p>4 exist.</p> <p>5 Q. Does that mean you can store it?</p> <p>6 A. No. Stow. Temporarily put it to one</p> <p>7 side.</p> <p>8 Q. And for whom were you an expert?</p> <p>9 A. Thor.</p> <p>10 Q. In that case it looks like you gave a</p> <p>11 deposition in May 2005?</p> <p>12 A. That's correct.</p> <p>13 Q. Was there any testimony thereafter at a</p> <p>14 trial?</p> <p>15 A. Not yet.</p> <p>16 Q. The case is still ongoing I take it?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And what law firm are you working with</p> <p>19 in connection with that consulting?</p> <p>20 A. It's Shohl, Dinsmore, S-h-o-h-l, comma,</p> <p>21 D-i-n-s-m-o-r-e.</p> <p>22 Q. The next case is CFM Corporation vs.</p> <p>23 Dimplex North America, Ltd.?</p> <p>24 A. Yes.</p>   |

2 (Pages 5 to 8)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 Q. Can you describe the nature of your<br/>2 expert services in that case?</p> <p>3 A. I was testifying on behalf of Dimplex in<br/>4 a matter concerning simulated fire, artificial<br/>5 fireplaces and stoves.</p> <p>6 Q. And do you recall the law firm that you<br/>7 worked with in that case?</p> <p>8 A. Venable.</p> <p>9 Q. Where is Venable?</p> <p>10 A. Baltimore.</p> <p>11 Q. Is that case ongoing?</p> <p>12 A. There is a second case -- there were<br/>13 several cases filed at the same time. There is a<br/>14 second related case going on now.</p> <p>15 Q. And where is that case pending?</p> <p>16 A. Toronto.</p> <p>17 Q. In connection with the first case for<br/>18 Dimplex, has there been a judgment?</p> <p>19 A. Yes.</p> <p>20 Q. And what was the judgment?</p> <p>21 A. The judgment was in favor of Dimplex<br/>22 with punitive damages.</p> <p>23 Q. I'm sorry. With punitive damages?</p> <p>24 A. Um-hmm. Yes.</p> | <p style="text-align: center;">Page 9</p> <p>1 Q. The fourth case on this list is<br/>2 PLH Products?</p> <p>3 A. Yes.</p> <p>4 Q. What was the nature of your involvement<br/>5 in that case?</p> <p>6 A. I testified as an expert in a matter<br/>7 involving theft of trade secrets for a portable<br/>8 sauna.</p> <p>9 Q. And for whom did you testify?</p> <p>10 A. PLH.</p> <p>11 Q. Is that case still pending?</p> <p>12 A. No.</p> <p>13 Q. What was the outcome of that case?</p> <p>14 A. I think it was a tie vote. I don't<br/>15 believe PLH won but I don't think Saunas won<br/>16 either.</p> <p>17 Q. The fifth case on this list is Packaging<br/>18 Aids Corporation. What was the nature of your<br/>19 involvement in that case?</p> <p>20 A. I testified on behalf of Mr. Kennedy in<br/>21 another case of theft of trade secrets.</p> <p>22 Q. And what was the trade secret involved<br/>23 or just generally?</p> <p>24 A. A machine for sealing plastic bags.</p>   |
| <p>1 Q. The third case is Applica Consumer<br/>2 Products vs. Tilia. What was the nature of your<br/>3 involvement in that case?</p> <p>4 A. I was testifying on behalf of Applica in<br/>5 a matter concerning a home appliance, a kitchen<br/>6 appliance.</p> <p>7 Q. What was the kitchen appliance?</p> <p>8 A. It's a vacuum sealer for food.</p> <p>9 Q. Was that a patent case?</p> <p>10 A. Yes.</p> <p>11 Q. And the prior two, were they also patent<br/>12 cases?</p> <p>13 A. Yes.</p> <p>14 Q. It says here it was an arbitration in<br/>15 September of 2004?</p> <p>16 A. Yes.</p> <p>17 Q. Did you give testimony during the<br/>18 arbitration?</p> <p>19 A. I did.</p> <p>20 Q. What was the outcome of that case?</p> <p>21 A. I'm not entirely clear because<br/>22 arbitrations, the results are generally<br/>23 confidential. I think, though, that Tilia<br/>24 prevailed.</p>   | <p style="text-align: center;">Page 10</p> <p>1 Q. It says here that the trial was in<br/>2 May 2004. Is that case still pending?</p> <p>3 A. No, it's completed.</p> <p>4 Q. And what was the outcome of that case?</p> <p>5 A. The jury found against Mr. Kennedy but<br/>6 markedly reduced the damages.</p> <p>7 Q. The sixth case is Certain Home Vacuum<br/>8 Packaging Machines. It says here you gave<br/>9 deposition testimony in March 2004. Can you<br/>10 describe the nature of the services you provided?</p> <p>11 A. It was a predecessor for No. 3 on this<br/>12 list.</p> <p>13 Q. So, it concerned the vacuum sealer for<br/>14 foods?</p> <p>15 A. Yes.</p> <p>16 Q. Was there a decision in that case?</p> <p>17 A. There was a -- yes.</p> <p>18 Q. What was the decision?</p> <p>19 A. I'm trying to think. I'm trying to<br/>20 think of how to recall exactly what it was. At<br/>21 least part of the outcome was that there was to be<br/>22 a further arbitration, i.e., No. 3 on the list.</p> <p>23 The other matters were somehow settled or<br/>24 adjudicated. I don't really recall.</p> |

3 (Pages 9 to 12)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p style="text-align: right;">Page 13</p> <p>1 Q. And for No. 3, Applica, and No. 6,<br/>2 Certain Home Vacuum Packaging Machines, were you an<br/>3 expert for -- for Applica?<br/>4 A. Yes, for Applica.<br/>5 Q. So, Applica was a party to Certain Home<br/>6 Vacuum Packaging?<br/>7 A. Yes. You know that ITC matters are<br/>8 tripartite matters. So, it was the same players<br/>9 plus the ITC.<br/>10 Q. And what law firm did you work for in<br/>11 connection with both of those cases?<br/>12 A. Baker Botts.<br/>13 Q. And for the PLH case, No. 4, what was<br/>14 the law firm that you worked with?<br/>15 A. James Dumas, D-u-m-a-s.<br/>16 Q. And where is James Dumas located?<br/>17 A. Los Angeles.<br/>18 Q. And for Mr. Kennedy, No. 5, what law<br/>19 firm, if any?<br/>20 A. It was Franklin Cram, C-r-a-m.<br/>21 Q. And where is Franklin Cram?<br/>22 A. Fort Worth.<br/>23 Q. Turning to No. 7 on the list, Systems<br/>24 Division, what was the nature of your involvement</p>  | <p style="text-align: right;">Page 15</p> <p>1 infringement having to do with nail guns.<br/>2 Q. And for whom were you testifying?<br/>3 A. Powers.<br/>4 Q. In connection with No. 7, the Teknek<br/>5 case.<br/>6 A. Yes.<br/>7 Q. What was the law firm with whom you were<br/>8 working?<br/>9 A. It will probably come to me, but I<br/>10 don't -- I don't recall at the moment.<br/>11 Q. And --<br/>12 A. It's in Los Angeles. It's a well-known<br/>13 firm. I want to say Milberg. Milberg Weiss.<br/>14 Q. Milberg Weiss?<br/>15 A. That -- I don't think that's it. I<br/>16 can't quite recall the name.<br/>17 Q. Okay. For the Illinois Tool Works, were<br/>18 you testifying on behalf of Illinois Tool Works?<br/>19 A. No, Powers.<br/>20 Q. I'm sorry. And what law firm were you<br/>21 working with?<br/>22 A. Morgan Lewis.<br/>23 Q. What was the outcome of the nail gun<br/>24 case?</p>  |
| <p style="text-align: right;">Page 14</p> <p>1 in that case?<br/>2 A. I was testifying on behalf of Teknek in<br/>3 a matter of patent infringement.<br/>4 Q. And what was the technology?<br/>5 A. Sheet cleaning machines. Sheet in the<br/>6 sense of rigid boards.<br/>7 Q. And what was the cleaning machine, just<br/>8 generally described?<br/>9 A. Certain manufacturing processes such as<br/>10 lamination require the substrates to be or the<br/>11 things that are to be laminated to be extremely<br/>12 clean and you can imagine keeping something the<br/>13 size of this tabletop perfectly clean. Once it's<br/>14 laminated together, that's it. Whatever is<br/>15 captured is captured. So, it's an industrial<br/>16 process.<br/>17 Q. Is that case completed?<br/>18 A. It is completed.<br/>19 Q. And what was the outcome of that case?<br/>20 A. They found against Teknek.<br/>21 Q. The next case, No. 8, is Illinois Tool<br/>22 Works, Inc. What was the nature of your<br/>23 involvement in that case?<br/>24 A. Testifying in a matter of patent</p> | <p style="text-align: right;">Page 16</p> <p>1 A. There was a -- after a Markman hearing,<br/>2 the -- I don't think there was -- I don't think<br/>3 there was a judgment. Let me get this straight.<br/>4 Powers in my view won, but I'm not entirely sure<br/>5 the details.<br/>6 Q. And No. 9, the Arris International case,<br/>7 what was your role in that case?<br/>8 A. Testifying in a matter of patent<br/>9 infringement over an electrical connector.<br/>10 Q. And for whom or what law firm were you<br/>11 working with?<br/>12 A. Saunders in Atlanta. That's not the<br/>13 full name, but I can't think of the full name.<br/>14 Q. And what side were you testifying for?<br/>15 A. Arris.<br/>16 Q. It says here there was a deposition in<br/>17 November 2002. Was there a trial?<br/>18 A. There was not a trial, and I don't<br/>19 recall how it came out.<br/>20 Q. Okay.<br/>21 A. It was some kind of settlement.<br/>22 Q. Can you describe generally what the<br/>23 electrical connector patent covered?<br/>24 A. It covered what's called an F connector,</p> |

4 (Pages 13 to 16)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 letter F. It's the connector on the back of your<br/>2 television set for the antenna.</p> <p>3 Q. Turning to No. 10, Semitool case. What<br/>4 was the nature of your involvement in that case?</p> <p>5 A. Testifying in a matter of patent<br/>6 infringement. Patents are on semiconductor<br/>7 processing equipment.</p> <p>8 Q. And on whose behalf were you testifying?</p> <p>9 A. TEA or Tokyo Electron.</p> <p>10 Q. Generally what was the technology at<br/>11 issue? You said semiconductor processing<br/>12 equipment.</p> <p>13 A. Yes, it's washing. Washing wafers.</p> <p>14 Q. And what did the patent cover?</p> <p>15 A. As I recall, it was a specific method of<br/>16 holding the wafer and conducting the washing<br/>17 operation. Like a glorified dishwasher.</p> <p>18 Q. Do you recall what firm you were working<br/>19 with?</p> <p>20 A. No, I don't. It was in New York.<br/>That's all I can recall.</p> <p>21 Q. It says here you gave a deposition in<br/>22 October and November 2002?</p> <p>23 A. Yes.</p> | <p>Page 17</p> <p>1 A. No.<br/>2 Q. Aside from Dr. Nayfeh's third report,<br/>3 have you considered anything else since the<br/>4 submission of your third report, Phillips<br/>5 Exhibit 3?</p> <p>6 A. No.<br/>7 Q. What is your experience in -- with<br/>8 regard to shavers?</p> <p>9 A. Well, like everyone else, I have used a<br/>10 shaver.</p> <p>11 Q. I haven't.</p> <p>12 A. Speak for yourself. A lot of women do.<br/>They make special models for them.</p> <p>13 Q. When you say like everyone else you've<br/>14 used a shaver, you mean electric shavers in<br/>15 particular?</p> <p>16 A. Yes.</p> <p>17 Q. And how often have you used an electric<br/>18 shaver?</p> <p>19 A. It's a long time ago. I don't use one<br/>20 anymore. I'm involved in another litigation matter<br/>21 involving safety razors.</p> <p>22 Q. What are safety razors?</p> <p>23 A. That's the kind that has a blade but is</p>   |
| <p>1 Q. Was there a trial?</p> <p>2 A. I don't believe there was. I did not<br/>3 participate in it.</p> <p>4 Q. Do you know the outcome of that case?</p> <p>5 A. I believe it settled, but I'm pretty<br/>6 vague on details.</p> <p>7 Q. Okay. I ask you to turn your attention<br/>8 to Phillips 1, 2 and 3, which are your three expert<br/>9 reports. Do these reports set forth all that you<br/>10 considered in rendering your opinions?</p> <p>11 A. I think I have -- they did at that time.<br/>I think I've received some information since. I<br/>believe there is a third expert report of<br/>14 Dr. Nayfeh.</p> <p>15 Q. Yes.</p> <p>16 A. And there may have been something else.<br/>That's all I can recall.</p> <p>17 Q. And do these three reports set forth all<br/>18 of the opinions you have?</p> <p>19 A. Yes, at that time, yes.</p> <p>20 Q. Do you have any other opinions?</p> <p>21 A. No, not yet.</p> <p>22 Q. Have you had cause to change any of your<br/>23 opinions that are set forth in these three reports?</p>  | <p>Page 18</p> <p>1 not the traditional "slash 'em up on Saturday<br/>2 night" razor.</p> <p>3 Q. What does that mean?</p> <p>4 A. It's the original invention of<br/>5 King Gillette. It's a device for guarding a razor<br/>6 so you don't kill yourself with it.</p> <p>7 Q. So, as opposed to the electric shavers,<br/>8 these --</p> <p>9 A. Originally there was a barber straight<br/>10 razor. Then there was a Gillette safety razor.<br/>11 Then there was the electric razor.</p> <p>12 Q. So, the safety razor, just so that I<br/>13 understand, would include things like the Mach 3?</p> <p>14 A. Yes. Every razor you buy at the<br/>15 drugstore is a safety razor.</p> <p>16 Q. What is the difference between a safety<br/>17 razor and an electric shaver?</p> <p>18 A. A safety razor, you use it wet with<br/>19 soap, shaving cream. And an electric razor,<br/>20 typically it's dry although it doesn't have to be.</p> <p>21 Q. And this other litigation where you are<br/>22 serving as an expert in a safety razor case?</p> <p>23 A. Yes.</p> <p>24 Q. What is that litigation?</p> |

5 (Pages 17 to 20)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 A. It's Gillette v. Schick.</p> <p>2 Q. Where is that case pending?</p> <p>3 A. Boston.</p> <p>4 Q. Do you know who the judge is in that</p> <p>5 case?</p> <p>6 A. No.</p> <p>7 Q. And for whom are you serving as an</p> <p>8 expert?</p> <p>9 A. Schick.</p> <p>10 Q. Is that the Quattro case?</p> <p>11 A. Yes.</p> <p>12 Q. What law firm are you working with in</p> <p>13 that case?</p> <p>14 A. Price Heneveld. It's H-e-n-e-v-e-l-d.</p> <p>15 Q. Where are they located?</p> <p>16 A. Grand Rapids.</p> <p>17 Q. Have you given any deposition or trial</p> <p>18 testimony in that case?</p> <p>19 A. Yes.</p> <p>20 Q. Which?</p> <p>21 A. A deposition.</p> <p>22 Q. And when was that deposition taken?</p> <p>23 A. A couple weeks ago.</p> <p>24 Q. Where was that taken?</p>   | Page 21 | <p>1 A. Yeah, the usual issues.</p> <p>2 Q. Including those?</p> <p>3 A. Including those.</p> <p>4 Q. How long have you been involved in that</p> <p>5 case? When were you retained?</p> <p>6 A. I want to say it was April.</p> <p>7 Q. April of 2005?</p> <p>8 A. Yes.</p> <p>9 Q. When were you retained in connection</p> <p>10 with this case?</p> <p>11 A. I think it was November of 2004. That's</p> <p>12 when I met Mr. Shimota was in November, and I can't</p> <p>13 recall if I was retained then or if it was later.</p> <p>14 I know nothing happened until a considerable time</p> <p>15 after November. Nothing happened involving me, let</p> <p>16 me put it that way.</p> <p>17 Q. So, aside from your personal use of</p> <p>18 electric shavers and the other litigation involving</p> <p>19 safety razors, what other experience do you have</p> <p>20 with electric shavers?</p> <p>21 A. I don't have any.</p> <p>22 Q. What is the connection between the</p> <p>23 safety razor case on which you are currently</p> <p>24 serving as an expert witness and the electric</p>    | Page 23 |
| <p>1 A. San Francisco.</p> <p>2 Q. Do you know who took the deposition, the</p> <p>3 firm?</p> <p>4 A. No. I'm sorry. I don't.</p> <p>5 Q. Would it have been Paul Weiss?</p> <p>6 A. Yes. It would have been Paul Weiss. I</p> <p>7 don't remember the attorney's name. Let me -- I</p> <p>8 think it was Paul Weiss. I wasn't ever formally</p> <p>9 introduced. I don't have his card.</p> <p>10 Q. Sure.</p> <p>11 A. I think it was Paul Weiss.</p> <p>12 Q. What was the nature of your testimony in</p> <p>13 that case?</p> <p>14 A. I was, well, testifying as an expert on</p> <p>15 behalf of Schick who is accused of patent</p> <p>16 infringement.</p> <p>17 Q. Have you given expert reports in</p> <p>18 connection with this case?</p> <p>19 A. Yes.</p> <p>20 Q. How many?</p> <p>21 A. Two, maybe three.</p> <p>22 Q. And what were the nature of those</p> <p>23 reports? What issues did they cover, validity and</p> <p>24 infringement?</p> | Page 22 | <p>1 shaver?</p> <p>2 MR. SHIMOTA: Objection; form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I would not make -- I would not make a</p> <p>5 connection. I understand that one of the parties</p> <p>6 is essentially the same because Gillette owns</p> <p>7 Braun, although I understand Gillette may be</p> <p>8 divesting Braun. I don't know the situation there.</p> <p>9 BY MS. WENDLANDT:</p> <p>10 Q. Okay. But in terms of the technology?</p> <p>11 A. The technology is irrelevant between the</p> <p>12 two. It just makes you familiar with the shaving</p> <p>13 environment. That's probably it.</p> <p>14 Q. What is your experience with hair</p> <p>15 clippers?</p> <p>16 A. Except for having them used on me, none.</p> <p>17 Q. Have you ever served as an expert in a</p> <p>18 case involving electric shavers?</p> <p>19 A. No.</p> <p>20 Q. Aside from this one?</p> <p>21 A. Aside from this one.</p> <p>22 Q. I'm asking you to turn your attention to</p> <p>23 Phillips Exhibit 1, page 3. Paragraph B lists</p> <p>24 exhibits to be used as a summary or support for the</p> | Page 24 |

6 (Pages 21 to 24)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1   opinions.</p> <p>2    A. Yes.</p> <p>3    Q. Do you see that?</p> <p>4       Aside from what's listed in paragraph</p> <p>5   14, which continues on to page 4, were there any</p> <p>6   other exhibits you intended to use at trial?</p> <p>7    A. No.</p> <p>8    Q. What are the graphical presentations</p> <p>9   describing the technology relevant to the</p> <p>10   patents-in-suit?</p> <p>11      Let me direct your attention to a</p> <p>12   particular line here. On page 4, three lines down.</p> <p>13   You describe "other graphical presentations</p> <p>14   describing the technology relevant to the</p> <p>15   patents-in-suit."</p> <p>16    A. I can't think of any at this point.</p> <p>17    Q. Have you discussed such graphical</p> <p>18   presentations with counsel?</p> <p>19    A. In a preliminary way, yes.</p> <p>20    Q. What were those preliminary discussions?</p> <p>21   THE WITNESS: Am I allowed to say so?</p> <p>22   MR. SHIMOTA: You may.</p> <p>23   BY THE WITNESS:</p> <p>24    A. Thinking of a way to diagram the</p>  | <p>Page 25</p> <p>1   and in the third report, Exhibit 3, it begins on</p> <p>2   page 3.</p> <p>3       A. Yes. It's that the patent specification</p> <p>4   is not consistent with the construction of the</p> <p>5   cradle concept and for it to be consistent, the</p> <p>6   specification would need to be different. It's a</p> <p>7   consequence of the claim construction.</p> <p>8       Q. Can you explain to me how the</p> <p>9   specification is not consistent with the</p> <p>10   construction of the cradle structure?</p> <p>11       A. Well, the specification, and by that I</p> <p>12   include the figures, the specification describes a</p> <p>13   bowl or basin into which the shaver head is placed</p> <p>14   and then operated very much like a birdbath with --</p> <p>15   instead of the bird flapping the wings, you have</p> <p>16   the motor of the shaver running its parts. And</p> <p>17   requires immersion of the head in the cleaning</p> <p>18   fluid that is held in the basin, what I also</p> <p>19   understand has been referred to as a receptacle.</p> <p>20       Well, the cradle, the way that is</p> <p>21   construed by the judge, does not require retaining</p> <p>22   the fluid, as I state in the report. And if</p> <p>23   that's -- if that's what the cradle means, i.e.,</p> <p>24   doesn't have to retain fluid, well, the patent does</p> |
| <p>1   differences between the '328 patent and the</p> <p>2   Remington shaver cleaner.</p> <p>3   BY MS. WENDLANDT:</p> <p>4       Q. What is the technology relevant to the</p> <p>5   patents-in-suit?</p> <p>6       A. It's mechanical design of fluid flow,</p> <p>7   heat transfer, a little bit of thermodynamics,</p> <p>8   perhaps a little chemistry. I think that's about</p> <p>9   it.</p> <p>10      Q. Why do you say perhaps chemistry?</p> <p>11       A. The cleaning action, the cleaning action</p> <p>12   is a washing and the nature of the liquid and the</p> <p>13   contaminants to be washed, there is chemical</p> <p>14   interaction between them.</p> <p>15      Q. In Phillips Exhibit 1, your first</p> <p>16   report, and Exhibit 3, your third report, you opine</p> <p>17   that the '328 patent and the '556 patent are</p> <p>18   invalid for indefiniteness?</p> <p>19      A. Yes.</p> <p>20      Q. Can you explain the basis for your</p> <p>21   opinion?</p> <p>22      A. Where is the reference in the reports?</p> <p>23      Q. Sure. On page 13 is the beginning of</p> <p>24   your indefiniteness discussion for the first report</p> | <p>Page 26</p> <p>1   not explain how this can be and so it's shy of a</p> <p>2   written description that is complete.</p> <p>3       Q. Now, how is that different than your</p> <p>4   opinion later on in your report that the patent --</p> <p>5   the '328 patent is invalid for inadequate written</p> <p>6   description?</p> <p>7       A. I have to say I'm not entirely clear.</p> <p>8       Q. Okay. What is your understanding of</p> <p>9   indefiniteness?</p> <p>10       A. It means that you -- it's very similar</p> <p>11   to written description. As I say, I have great</p> <p>12   trouble telling them apart. It means that you --</p> <p>13   in return for the monopoly of the patent, you have</p> <p>14   to tell people how to practice your invention; and</p> <p>15   the inventor has not done so.</p> <p>16       Q. How is the prosecution history relevant</p> <p>17   to making that assessment?</p> <p>18       A. Just a moment, please.</p> <p>19       Q. Sure.</p> <p>20       A. Could you point me to the place in the</p> <p>21   report where you are noting that.</p> <p>22       Q. Sure. Starting at page 14 of your</p> <p>23   report, of the first report, Exhibit 1.</p> <p>24       A. Yes.</p>  |

7 (Pages 25 to 28)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p style="text-align: right;">Page 29</p> <p>1 Q. Paragraph 42 -- 43, you discuss the<br/>2 prosecution statements of Braun with regard to the<br/>3 Lee patent and then you discuss on paragraph 45 the<br/>4 Schinn patent and then paragraph 47, the Braun --<br/>5 the Cunningham patent.</p> <p>6 A. Yes.</p> <p>7 Q. All of which were part of the<br/>8 prosecution histories of either the '556 or the<br/>9 '328 patent.</p> <p>10 A. Yes.</p> <p>11 Q. And then again in your third report,<br/>12 paragraph 19, you start discussing the Lee patent,<br/>13 which is on page 5.</p> <p>14 I could repeat the question when you're<br/>15 ready.</p> <p>16 A. Yes, read it again if you don't mind.</p> <p>17 Q. The question is: In making your<br/>18 assessment of whether the patent specification is<br/>19 consistent or inconsistent with the Court's<br/>20 construction of cradle structure, why is the<br/>21 prosecution history important or discussed in your<br/>22 opinion?</p> <p>23 A. The patents referred to all have basins<br/>24 as the Braun does, as the '328 patent does, and yet</p>  | <p>1 which is the Lee patent, U.S. Patent No. 3,890,988.<br/>2 Looking at figure 5 of that patent, is<br/>3 receptacle 10 in figure 5 adapted to receive the<br/>4 shaving head of a shaving apparatus?<br/>5 A. Yes.<br/>6 Q. Well, in paragraph 21 of your third<br/>7 report, Exhibit 3, you state three lines down, "The<br/>8 receptacle in figure 5 of the Lee patent also<br/>9 clearly could receive or support a shaving head of<br/>10 a shaving apparatus if appropriately sized."<br/>11 My question is: Is it actually adapted<br/>12 to receive a shaving head of a shaving apparatus?<br/>13 A. Yes. I think you are working on the<br/>14 difference of definition of the word "adapted" and<br/>15 the word "sized."<br/>16 Q. Okay. Can you explain that?<br/>17 A. Well, I think -- I think adapted means<br/>18 suitable except for perhaps the sizing and as I<br/>19 mentioned, patent drawings are not to scale.<br/>20 Q. So, this is your discussion before about<br/>21 so long as the topology is maintained --<br/>22 A. Yes.<br/>23 Q. -- the size is irrelevant?<br/>24 A. Yes.</p> |
| <p style="text-align: right;">Page 30</p> <p>1 Braun was -- Braun said his device was not anything<br/>2 like those. And it's hard to see why -- why he<br/>3 said that.</p> <p>4 That the grounds seem to have been that<br/>5 the -- that the cited patents were not exactly the<br/>6 same size as the shaver although it's my<br/>7 understanding of patents that the patent drawings,<br/>8 that they are not to scale, and if you maintain the<br/>9 topology of them you can make them any size or<br/>10 shape you want, including a size suitable to accept<br/>11 a shaver.</p> <p>12 Q. So, again, why are the statements of<br/>13 Mr. Braun in prosecution important in making the<br/>14 assessment of whether or not the specification<br/>15 discloses something that the Court construed?</p> <p>16 A. The -- what I think is that the prior<br/>17 art does render Braun at least obvious. I'm not<br/>18 sure what the prosecution history has to do with it<br/>19 exactly, but the art cited -- except for citing the<br/>20 art in the prosecution history.</p> <p>21 Q. I'm going to place before you what has<br/>22 been previously marked Phillips Exhibit 5, which is<br/>23 Exhibits 17 through 32 to your first report.<br/>24 I'm going to ask you to turn to tab 20,</p> | <p style="text-align: right;">Page 32</p> <p>1 Q. So, in your third report when you say<br/>2 "could," you actually mean "is," is adapted to<br/>3 receive a --<br/>4 A. I say -- well, what I say is it could<br/>5 receive if appropriately sized. I take that to be<br/>6 the same as is adapted.</p> <p>7 Q. What about in figure 5 of the Lee<br/>8 patent, the oil drum 15. If appropriately sized,<br/>9 is that adapted to receive the shaving head of a<br/>10 shaving apparatus?</p> <p>11 A. Wait a minute. You say figure 5?<br/>12 Q. Yes.<br/>13 A. And you say oil drum and you say 15.<br/>14 Q. Let's see. Well, let's work with figure<br/>15 1, then. Figure 1.<br/>16 In figure 1 of the Lee patent is oil<br/>17 drum 15 adapted to receive the shaving head of a<br/>18 shaving apparatus if appropriately sized?<br/>19 A. I don't think I considered figure 1 as<br/>20 much as figure 5.</p> <p>21 Q. Can you from figure 5 tell which is the<br/>22 oil drum --<br/>23 A. Well, it looks --<br/>24 Q. -- of figure 1?</p>   |

8 (Pages 29 to 32)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 A. It looks to me that -- I would have to<br/> 2 reread the Lee patent in more detail. I see some<br/> 3 features in figure 1 that are absent in figure 5.<br/> 4 Perhaps oil drum either 15 or 12, it's kind of --<br/> 5 if in fact that is an oil drum, is similar to 59 or<br/> 6 50, something to do with the outer shell of the<br/> 7 lower casing.</p> <p>8 Q. Well, looking to column 2 of the Lee<br/> 9 patent, lines 40 through 45, you will see there is<br/> 10 a description of container 12 and oil drum 15. Can<br/> 11 you read that to yourself.</p> <p>12 A. Column 2, line 45.</p> <p>13 Q. 40 through 45.</p> <p>14 A. Okay. I've read the paragraph.</p> <p>15 Q. Does that help you determine whether oil<br/> 16 drum 15 could or is a structure adapted to receive<br/> 17 the shaving head of a shaving apparatus?</p> <p>18 A. Well, it doesn't relate it to figure 5,<br/> 19 which is what I'm most interested in.</p> <p>20 Q. Okay. The discussion of figure 5 begins<br/> 21 at column 3, line 55, maybe 56.</p> <p>22 A. And what is your question?</p> <p>23 Q. The question is: Having read that<br/> 24 discussion, and I understand you haven't read the</p> | <p>Page 33</p> <p>1 Q. But it --</p> <p>2 A. But it's not the basin that receives<br/> 3 the -- that could receive the shaving head.</p> <p>4 Q. Because it performs those other<br/> 5 functions?</p> <p>6 A. Well, because 10 performs that function<br/> 7 and 10 is blocking the way to 50.</p> <p>8 Q. So, it's the fact that 10 is a lid or<br/> 9 cover to 50?</p> <p>10 A. No, I don't think it is. I think it's a<br/> 11 basin.</p> <p>12 Q. Maybe I misspoke. The reason you think<br/> 13 that 50 is not adapted to receive a shaving head of<br/> 14 a shaving apparatus is because the receptacle 10 is<br/> 15 blocking the top portion of 50?</p> <p>16 A. Yes. And 10 is intended for that<br/> 17 purpose. 10 is kind of a sink. Like a wash basin.</p> <p>18 As I understand Mr. Lee's patent, this<br/> 19 thing is very much like a lavatory sink with its --<br/> 20 with its own liquid supply and its own drain, sort<br/> 21 of self-regenerating in that little cabinet under<br/> 22 the sink.</p> <p>23 And item 50 is simply that cabinet.<br/> 24 It's a convenient liquid-tight structure,</p>  |
| <p>1 whole thing currently, does that aid your<br/> 2 assessment as to whether or not the container 50 in<br/> 3 figure 5 or the oil drum 15 in figure 1 is a<br/> 4 structure adapted to receive the shaving head of a<br/> 5 shaving apparatus?</p> <p>6 A. It doesn't -- it doesn't help. It<br/> 7 doesn't really address the issue.</p> <p>8 Q. And what would you need to see to<br/> 9 understand the issue?</p> <p>10 A. Well, I think the receptacle that is<br/> 11 adapted to receive the shaving head is Item 10.</p> <p>12 Q. And you gather that through looking at<br/> 13 figure 5?</p> <p>14 A. Yes.</p> <p>15 Q. Or a discussion --</p> <p>16 A. Figure 5.</p> <p>17 Q. And by looking at figure 5, you can't<br/> 18 determine whether or not the container 50 is also<br/> 19 adapted to receive the shaving head of a shaving<br/> 20 apparatus?</p> <p>21 A. Well, no, I don't think it is. I think<br/> 22 it's -- it's a housing -- it holds the liquid not<br/> 23 being used. It holds the sludge that's removed<br/> 24 from the parts. It's kind of a catch basin.</p>  | <p>Page 34</p> <p>1 inexpensive, and then the sink is inserted in the<br/> 2 top of it and the workman performs his work on the<br/> 3 top part in that sink.</p> <p>4 So, I think 10 is adapted to, in the<br/> 5 context of the discussion, receive the razor<br/> 6 shaving head and 50 is merely a support for it.</p> <p>7 Q. In paragraph 19 of your third report,<br/> 8 you note in the last sentence that the examiner did<br/> 9 not appear to be persuaded by Braun's argument,<br/> 10 referring to the argument that the Lee patent was<br/> 11 non-analogous art. Do you see that?</p> <p>12 A. I do see it.</p> <p>13 Q. Why was the agreement or disagreement of<br/> 14 the examiner with Braun's argument as to the<br/> 15 non-analogous nature of the Lee patent important in<br/> 16 making your opinion with regard to indefiniteness?</p> <p>17 A. Just a moment, please.</p> <p>18 Q. Sure.</p> <p>19 A. I am in this paragraph taking issue with<br/> 20 Dr. Nayfeh, rebutting an assertion that he made.<br/> 21 Really correcting what I think he said.</p> <p>22 Q. And how is the -- how, if at all, is the<br/> 23 examiner's agreement or disagreement with Braun's<br/> 24 argument with regard to the analogous nature or</p> |

9 (Pages 33 to 36)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 non-analogous nature of the Lee patent relevant to<br/> 2 your indefiniteness opinion other than refuting<br/> 3 Dr. Nayfeh?</p> <p>4 A. Well, it's -- it's all tied into the<br/> 5 construction. I think that Dr. Nayfeh erred when<br/> 6 he said that the examiner agreed with Mr. Braun in<br/> 7 the prosecution.</p> <p>8 It appears that the examiner did not<br/> 9 agree with Mr. Braun and it's -- Braun is trying to<br/> 10 distinguish his basin from Lee's basin and doing so<br/> 11 by calling it a cradle and somehow distinguishing<br/> 12 it that way. And it didn't look to me as if that<br/> 13 were proper.</p> <p>14 Q. How does that relate to your<br/> 15 indefiniteness opinion?</p> <p>16 A. Well, he's got -- Braun apparently has<br/> 17 something that is a basin but not a basin and that<br/> 18 sounds pretty indefinite to me.</p> <p>19 Q. And the examiner's agreement with that<br/> 20 argument, with the non-analogous argument, how does<br/> 21 that fit into the assessment?</p> <p>22 A. I cannot at this point recall the<br/> 23 examiner's -- we'd have to look at the chain of<br/> 24 correspondence back and forth with the examiner and</p> | <p>Page 37</p> <p>1 Q. Are the arguments made by the patentee,<br/> 2 Mr. Braun, in response with regard to the Lee<br/> 3 patent, if you could review those.</p> <p>4 A. Paragraph E and then start beginning on<br/> 5 94.</p> <p>6 Q. That's right.</p> <p>7 A. Thank you. And on 94 is the part<br/> 8 beginning with "Remarks"?</p> <p>9 Q. Yes, it is.</p> <p>10 A. All right. I have read those.</p> <p>11 Q. Having read the prosecution history's<br/> 12 discussion of the Lee patent, can you now tell me<br/> 13 why in forming your opinion on the indefiniteness<br/> 14 of the '328 patent it's important whether or not<br/> 15 the examiner agreed with Mr. Braun's assessment or<br/> 16 argument that the Lee patent is non-analogous art?</p> <p>17 A. Well, I disagree with the -- with the<br/> 18 attorney's argument here saying that Lee is not<br/> 19 relevant and I don't think his arguments have any<br/> 20 merit and I'd have to look still further in the<br/> 21 prosecution history to find out how this view was<br/> 22 accepted or acquiesced to by the examiner.</p> <p>23 But it remains clear that the cradle as<br/> 24 construed is not the same as the cradle that is</p> |
| <p>1 the attorney prosecuting the case to see just what<br/> 2 the effect is.</p> <p>3 Q. Why?</p> <p>4 A. Well, that's where the correspondence<br/> 5 is. That's where the contact between the examiner<br/> 6 and Mr. Braun occurs.</p> <p>7 Q. I understand that. But why is that<br/> 8 related to indefiniteness?</p> <p>9 A. It's to get the exact shade of meaning<br/> 10 that Mr. Braun was putting forth to the examiner on<br/> 11 why his patent should be granted.</p> <p>12 Q. Asking you to turn your attention to<br/> 13 Phillips Exhibit 5, tab 19 is the prosecution<br/> 14 history for the '556 patent or portions thereof?</p> <p>15 A. Um-hmm, yes.</p> <p>16 Q. I believe it's on page B 83 that the<br/> 17 examiner's discussion of the Lee patent begins,<br/> 18 paragraph E. If I could ask you to review<br/> 19 paragraph E.</p> <p>20 A. Right. Thank you. I'm doing that.</p> <p>21 Q. Okay. Then at page B 94.</p> <p>22 A. Yes. 94?</p> <p>23 Q. 94, yes.</p> <p>24 A. Go ahead.</p>  | <p>Page 38</p> <p>1 described. And, so, either the construction is<br/> 2 wrong or the description is wrong.</p> <p>3 Q. And you're talking about the description<br/> 4 within the patent itself?</p> <p>5 A. Yes.</p> <p>6 Q. Not within the prosecution history?</p> <p>7 A. Not within the prosecution history.</p> <p>8 Q. What would it tell you if the examiner<br/> 9 hypothetically wrote a note and it was in the<br/> 10 prosecution history saying, "I disagree with the<br/> 11 argument that Lee is non-analogous"?</p> <p>12 A. Well, I'd be interested to see what<br/> 13 arguments were used to persuade him because I don't<br/> 14 see it in this and but -- and I have read the<br/> 15 prosecution history, but I don't recall this aspect<br/> 16 of it. I recall several of the phrases that I see<br/> 17 here. I'm reminded of them by reading this.<br/> 18 "Tossed" specifically.</p> <p>19 Q. I'm sorry?</p> <p>20 A. Tossed, t-o-s-s-e-d. That word was very<br/> 21 conspicuous to me.</p> <p>22 The attorney is playing down the<br/> 23 cradling effect of the basin or sink and referring<br/> 24 to tossing parts into it and being somehow not</p>                                |

10 (Pages 37 to 40)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 adapted to receive. I just didn't buy that.</p> <p>2 Q. Asking you to turn your attention to</p> <p>3 Phillips Exhibit 4 or Exhibit 5, tab 21. The</p> <p>4 Schinn patent, which is U.S. Patent 4,815,486.</p> <p>5 A. Yes. Schinn.</p> <p>6 Q. Does the Schinn patent incorporate a</p> <p>7 structure adapted to receive the shaving head of a</p> <p>8 shaving apparatus?</p> <p>9 A. Yes, it does.</p> <p>10 Q. What is that structure?</p> <p>11 A. Well, it's shown generally as Item 10.</p> <p>12 Q. You are referring to figure 2 of the</p> <p>13 Schinn patent?</p> <p>14 A. Yes, it's the only place that Item 10</p> <p>15 appears.</p> <p>16 Q. In paragraph 23 of Exhibit 3, your third</p> <p>17 report.</p> <p>18 A. Paragraph what?</p> <p>19 Q. 23, page 7.</p> <p>20 A. Thank you.</p> <p>21 Q. Sure.</p> <p>22 A. Yes.</p> <p>23 Q. About four lines down you state, "The</p> <p>24 Schinn device could have just as easily</p> | Page 41 | Page 43 |
|   | Page 42 | Page 44 |

11 (Pages 41 to 44)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 third report, on page 4, paragraph 15.</p> <p>2 A. Yes.</p> <p>3 Q. You state, "It is true that frameworks</p> <p>4 are structures, but not all structures are</p> <p>5 frameworks"?</p> <p>6 A. Yes.</p> <p>7 Q. Can you explain that?</p> <p>8 A. I will try to. A framework is a</p> <p>9 particular kind of structure. It is more open,</p> <p>10 more skeletal. The word frame in common use means</p> <p>11 something that surrounds or encloses. A frame is</p> <p>12 distinguished from a panel, for instance. And the</p> <p>13 combination of a framework and panels could</p> <p>14 constitute a structure. Panels could constitute a</p> <p>15 structure. The frame could constitute a structure,</p> <p>16 but the reverse is not true. The structure is a</p> <p>17 more enveloping word.</p> <p>18 Q. So, my next question was: Can you give</p> <p>19 me an example of something that's a structure but</p> <p>20 not a framework?</p> <p>21 A. Well, a solid cube is a structure. It</p> <p>22 is not a framework. And a --</p> <p>23 Q. Because the cube doesn't envelop</p> <p>24 anything?</p> | <p>Page 45</p> <p>1 A. It's item 45.</p> <p>2 Q. In figure 4?</p> <p>3 A. It's in figure 4, yes.</p> <p>4 Q. And why do you say that is adapted to</p> <p>5 receive a shaving head of a shaving apparatus?</p> <p>6 A. It's a -- it's a basket with an open top</p> <p>7 and you could size it to receive the shaving head.</p> <p>8 Right now it's sized to receive dentures.</p> <p>9 Q. If I could ask you to turn your</p> <p>10 attention to paragraph 22 of Exhibit 3, your third</p> <p>11 report.</p> <p>12 A. Yes.</p> <p>13 Q. If you could read paragraph 26 to your</p> <p>14 report to refresh your recollection of what you</p> <p>15 wrote and then in your own words if you could</p> <p>16 explain to me the argument here with regard to</p> <p>17 paragraph 26.</p> <p>18 A. Wait. We were -- we were talking about</p> <p>19 Cunningham and this refers to Lee. What --</p> <p>20 Q. Oh, I'm sorry. It's in your third</p> <p>21 report.</p> <p>22 A. Yes. Third report, paragraph 22?</p> <p>23 Q. 26. I'm sorry.</p> <p>24 A. Thank you. Would you let me have your</p> |
| <p>1 A. That's right. And a panel would be</p> <p>2 another example.</p> <p>3 Q. What's a panel?</p> <p>4 A. Well --</p> <p>5 Q. Like the tabletop?</p> <p>6 A. A tabletop. A window pane. You notice</p> <p>7 similarity between the word "pane" and the word</p> <p>8 "panel." A rectangular solid that is thin in one</p> <p>9 dimension.</p> <p>10 As I look across the street, I see a big</p> <p>11 office building and it certainly is a structure and</p> <p>12 if I were to look at it with x-ray eyes I would see</p> <p>13 the component pieces including the steel skeleton,</p> <p>14 the steel frame that is holding it up.</p> <p>15 Q. I ask you to turn your attention to</p> <p>16 Phillips 5, tab 22.</p> <p>17 A. 22?</p> <p>18 Q. 22. The Cunningham patent, which is</p> <p>19 U.S. Patent No. 5,335,394.</p> <p>20 A. Yes.</p> <p>21 Q. In that patent or in that device, the</p> <p>22 Cunningham device, what is the structure adapted to</p> <p>23 receive the shaving head of a shaving apparatus, if</p> <p>24 any?</p>   | <p>Page 46</p> <p>1 question again, please.</p> <p>2 Q. Sure. Let me refine the question a bit.</p> <p>3 The last sentence in this paragraph is,</p> <p>4 "It remains my opinion that Braun's clear</p> <p>5 disclaimer of the basket in the Cunningham patent."</p> <p>6 Starting there.</p> <p>7 Where in the prosecution history did</p> <p>8 Braun clearly disclaim the basket of the Cunningham</p> <p>9 patent?</p> <p>10 And the prosecution history for your</p> <p>11 reference is in Exhibit 4, tab 12. I note that</p> <p>12 Braun's discussion of the Cunningham patent is at</p> <p>13 B 335.</p> <p>14 A. Yes.</p> <p>15 Q. Of Exhibit 12.</p> <p>16 A. Please, sorry. But please repeat your</p> <p>17 question.</p> <p>18 Q. Sure. In paragraph 26 of your third</p> <p>19 report you say, you refer to Braun's clear</p> <p>20 disclaimer of the basket in the Cunningham patent.</p> <p>21 Where in the prosecution history did</p> <p>22 Braun clearly disclaim the basket of the Cunningham</p> <p>23 patent?</p> <p>24 A. It looks to me as if it's on page 335 of</p>   |

12 (Pages 45 to 48)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 that prosecution history and it is the sixth line<br/> 2 from the bottom. "Cunningham does not teach."<br/> 3 Q. "Cunningham does not teach a cradle<br/> 4 structure adapted to receive an object to be<br/> 5 cleaned and to which cleaning fluid is fed arranged<br/> 6 above a fluid level of the cleaning fluid"?</p> <p>7 A. Yes.</p> <p>8 Q. And you read that to be a clear<br/> 9 disclaimer of the basket in the Cunningham patent?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Prior to that sentence, the prosecution<br/> 12 history discusses the other embodiment of the<br/> 13 Cunningham patent in which eyeglasses to be cleaned<br/> 14 are immersed in a chamber. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. You don't connect the prior sentence to<br/> 17 this sentence?</p> <p>18 A. Well, I see why you make the point<br/> 19 because the eyeglasses -- clearly the person<br/> 20 writing this letter wants you to make that<br/> 21 connection.</p> <p>22 But if he had said "that part of<br/> 23 Cunningham," I would probably not have an argument<br/> 24 with him. But he doesn't say that. He says</p>           | <p>Page 49</p> <p>1 A. Neither. Of the -- the basket is used<br/> 2 with the ultrasonic cleaner in Braun's factory.<br/> 3 There are lots of baskets and that's one of them.<br/> 4 Q. And you say, though, that Braun's<br/> 5 ultrasonic cleaner appears to use the type of<br/> 6 basket used in the Schinn patent.</p> <p>7 A. Oh.</p> <p>8 Q. Do you see that?</p> <p>9 A. That I think is a mistake.</p> <p>10 Q. That is just typo. That should have<br/> 11 been Cunningham?</p> <p>12 A. It should have been Cunningham, yes. I<br/> 13 could see the reason for your confusion because<br/> 14 there isn't any basket in Schinn.</p> <p>15 Q. It continues, "The basket in the<br/> 16 Cunningham patent is lowered into the cleaning<br/> 17 fluid thereby feeding the fluid."</p> <p>18 A. Yes.</p> <p>19 Q. Can you explain to me how lowering the<br/> 20 basket in the Cunningham patent is feeding the<br/> 21 fluid?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. The analogy is are you going to raise</p>  |
| <p>1 "Cunningham."</p> <p>2 Q. Okay.</p> <p>3 A. And Cunningham includes figure 4 and<br/> 4 figure 4 has got what looks mighty like a cradle to<br/> 5 me as defined by the judge.</p> <p>6 Q. In paragraph 26 of your third report,<br/> 7 you state, "Braun's ultrasonic cleaner appears to<br/> 8 use the type of basket used in the Schinn patent."</p> <p>9 Do you see that?</p> <p>10 A. Yes, I recall that.</p> <p>11 Q. Did you mean to say in the Cunningham<br/> 12 patent or are you referring to the Schinn patent?</p> <p>13 A. I -- I meant the -- I realized it's kind<br/> 14 of a jump there, but I meant the ultrasonic<br/> 15 cleaner. It's reference to the Hoeser deposition.</p> <p>16 Q. Yes.</p> <p>17 A. That's where the ultrasonic cleaner<br/> 18 surfaces and we have the description by Mr. Hoeser<br/> 19 of how the thing worked and it was another basket<br/> 20 and that's why it's in paragraph 26.</p> <p>21 Q. So, when you are referring to the<br/> 22 basket, you are referring to the basket not of the<br/> 23 Schinn patent, but of the Cunningham patent, figure<br/> 24 4 of the Cunningham patent?</p> | <p>Page 50</p> <p>1 the bridge or lower the river.</p> <p>2 Q. Can you explain that further?</p> <p>3 A. Well, I better not. If the analogy<br/> 4 needs explaining, we're in trouble.</p> <p>5 Q. We may be.</p> <p>6 A. The feeding is a relative motion and<br/> 7 whether it's liquid is fed to the solid or the<br/> 8 solid is fed to the liquid is really irrelevant<br/> 9 because the action -- the action is the same. The<br/> 10 liquid progressively wets the solid.</p> <p>11 So, I think the -- I think lowering the<br/> 12 basket of Cunningham into the liquid is the same as<br/> 13 holding the basket still and flooding the<br/> 14 environment so that it envelops the basket.</p> <p>15 Q. And so in the Cunningham patent what is<br/> 16 the device that feeds the fluid?</p> <p>17 A. It's the motor that lowers the basket.</p> <p>18 I haven't even looked at it to refresh my memory if<br/> 19 there is a motor, but I'm pretty sure there is.</p> <p>20 Some kind of device that lowers it. Whatever it<br/> 21 is.</p> <p>22 Q. And would that include manually<br/> 23 lowering?</p> <p>24 A. Yes, it would.</p> |

13 (Pages 49 to 52)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 Q. Okay. Can you explain to me the basis<br/>2 of your opinion that the '328 patent is invalid for<br/>3 inadequate written description? For your<br/>4 reference, in Exhibit 3, that written description<br/>5 discussion starts at page 8. And in your first<br/>6 report it starts at page 18.</p> <p>7 A. I don't know that I have anything to add<br/>8 to what we have previously discussed in this point.<br/>9 I think -- I will try to say it again if I can and<br/>10 hope I can be consistent.</p> <p>11 It's that the '328 patent doesn't teach<br/>12 a structure that holds the shaving head but that<br/>13 does not retain liquid, and it would have to do<br/>14 that to be consistent with the construction of the<br/>15 Court.</p> <p>16 THE WITNESS: Could we take a break?</p> <p>17 MS. WENDLANDT: Sure.</p> <p>18 THE WITNESS: Is this an okay time?</p> <p>19 MS. WENDLANDT: Right now is a good time, yes.</p> <p>20 (WHEREUPON, a recess was had<br/>21 from 10:23 to 10:36 a.m.)</p> <p>22 BY MS. WENDLANDT:</p> <p>23 Q. Mr. Phillips, placing before you what<br/>24 has been marked as Phillips Exhibit 7. This is a</p> | <p>Page 53</p> <p>1 BY MS. WENDLANDT:<br/>2 Q. Can you explain that answer? I don't<br/>3 understand the "horizontal up" portion of it.<br/>4 A. Yes. I can see why it would be<br/>5 confusing.<br/>6 The retention of a concave surface<br/>7 depends on the direction of gravity and so if it's<br/>8 a horizontal basin with the concavity pointing up,<br/>9 then it would retain fluid. Look at the word basin<br/>10 in geologic terms.<br/>11 Q. What if claim 1 said a cradle<br/>12 structure -- was the same except it didn't say<br/>13 including a concave surface. Would that receive or<br/>14 retain cleaning fluid?<br/>15 A. Yes.<br/>16 Q. Would it receive and retain cleaning<br/>17 fluid?<br/>18 A. No.<br/>19 Q. And why not?<br/>20 A. Well, a cradle structure -- if you take<br/>21 away the concave surface, you then have the first<br/>22 part of claim 11, which I understand is asserted<br/>23 and claim 1 is not.<br/>24 And claim -- and claim 11, that term,</p>   |
| <p>1 copy of the '328 patent. Can I ask you to look at<br/>2 the first claim of that patent, which is on column<br/>3 13, around line 25.<br/>4 A. Yes.<br/>5 Q. Can you read that claim to yourself.<br/>6 Claim 1.<br/>7 A. Yes. Yes.<br/>8 Q. Does claim 1 describe a cradle structure<br/>9 that receives or retains cleaning fluid?<br/>10 A. Yes.<br/>11 Q. Does it describe a cradle structure that<br/>12 receives and retains cleaning fluid?<br/>13 A. Yes.<br/>14 Q. What is the basis of your opinion?<br/>15 A. The word "concave."<br/>16 Q. Can you explain that further?<br/>17 A. A concave surface is a basin and it will<br/>18 retain fluid, if it's horizontal, and it does say a<br/>19 cradle structure, which I presume to be horizontal.<br/>20 Horizontal up.<br/>21 MS. WENDLANDT: Can you read that back,<br/>22 please.<br/>23 (WHEREUPON, the record was read<br/>24 by the reporter as requested.)</p>   | <p>Page 54</p> <p>1 "cradle structure," the judge has construed it as<br/>2 received or retained.<br/>3 Q. I see. So, you are working off the<br/>4 Court's construction?<br/>5 A. Yes, I am.<br/>6 Q. Okay. You disagree with the Court's<br/>7 construction --<br/>8 A. Yes.<br/>9 Q. -- of cradle structure?<br/>10 A. Of cradle structure.<br/>11 Q. Setting aside the Court's construction,<br/>12 would you believe that a cradle structure as in<br/>13 claim -- as claimed in claim 1 without the concave<br/>14 surface would receive and retain cleaning fluid?<br/>15 A. If I didn't have the judge's<br/>16 construction, then I would presume there has been<br/>17 no construction hearing and if that is the case,<br/>18 when I have a somewhat ambiguous word as "cradle,"<br/>19 I would turn to the specification of the patent to<br/>20 define what it is. I know what -- I know what a<br/>21 cradle is in ordinary English.<br/>22 When I turn to the patent, I would find<br/>23 that a cradle structure has got a concave surface.<br/>24 I don't know that it uses the word, but it is</p> |

14 (Pages 53 to 56)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 certainly pictured. And I would say, yes, that<br/>2 will retain -- that will retain liquid.<br/>3 Q. And would -- setting aside the Court's<br/>4 construction, again, claim 1, could the cradle<br/>5 structure of claim 1 include a structure that<br/>6 receives or retains cleaning fluid if claim 1 did<br/>7 not have the concave surface?<br/>8 A. Ask it again.<br/>9 Q. Sure. I will try.<br/>10 Setting aside the Court's construction,<br/>11 would the cradle structure of claim 1 receive or<br/>12 retain cleaning fluid if it did not have a concave<br/>13 surface?<br/>14 A. Yes, and I have to say that "or" to my<br/>15 way of thinking is not exclusionary.<br/>16 Q. Can you explain that?<br/>17 A. Well, if you want to exclude it, if you<br/>18 want to say retain -- if you said either retain<br/>19 or -- either receive or retain, that would mean<br/>20 A or B but not both. If you say receive or retain,<br/>21 you also include receive and retain.<br/>22 Q. Okay. Going with the exclusionary<br/>23 definition, that is, receive but not retain, would<br/>24 the cradle structure of claim 1 that does not</p>                        | <p>Page 57</p> <p>1 determine, again, without the concave surface,<br/>2 determine that the cradle structure retains but<br/>3 not -- well, receives and retains as opposed to<br/>4 receives only cleaning fluid?<br/>5 Can you tell from claim 1 the dynamics<br/>6 that you were describing about the influx and<br/>7 outflow and whether or not water or cleaning fluid<br/>8 will be retained?<br/>9 A. Well, I can do it by turning to the<br/>10 specification for interpretation of cradle. That's<br/>11 all I have to go on.<br/>12 Q. Okay. So, the specification describes a<br/>13 cradle that -- in which fluid is received and<br/>14 retained?<br/>15 A. Yes, it does.<br/>16 Q. And based on that, you interpret the<br/>17 fluid dynamics that you were describing before<br/>18 where there is actually retention?<br/>19 A. Yes.<br/>20 Q. Okay.<br/>21 A. And it's covered in several places. The<br/>22 inventor says that one is to immerse the head of a<br/>23 razor in a bath of liquid. So, that has to happen.<br/>24 Q. Turning your attention to Phillips</p> |
| <p>1 include a concave surface receive but not retain<br/>2 cleaning fluid?<br/>3 A. No, it would retain.<br/>4 Q. And why do you say that?<br/>5 A. Well, it's a basin. Gravity is at work.<br/>6 The liquid can't get out.<br/>7 Q. What about at the outlet port connecting<br/>8 the cradle structure with the cleaning fluid<br/>9 container. Let's see, at lines 9 to 30.<br/>10 A. I know where it is. That -- that works<br/>11 by -- well, you've got a continuous inlet and<br/>12 continuous outlet. It's -- it's very much like the<br/>13 wash basin with the water turned on full and the<br/>14 drain open. The water -- if there is more water<br/>15 coming in than going to out, the water level will<br/>16 rise, eventually getting to the overflow. And the<br/>17 figure in the '328 patent shows that quite clearly,<br/>18 and there is some discussion in the text of how it<br/>19 works.<br/>20 So, it's -- it's self-draining you might<br/>21 say. It retains fluid -- retains fluid for a while<br/>22 until it eventually, until you shut off the supply<br/>23 and what's left drains out the hole.<br/>24 Q. And how can you based on claim 1</p> | <p>Page 58</p> <p>1 Exhibit 3, your opinion as to new matter on<br/>2 page 12, and in Exhibit 1, your first report, it's<br/>3 at page 20.<br/>4 A. Yes.<br/>5 Q. Do you opine that the '328 patent is<br/>6 invalid for inclusion of new matter?<br/>7 A. Yes.<br/>8 Q. Can you explain to me the bases of your<br/>9 opinion?<br/>10 A. Yes, but give me a moment to review<br/>11 this.<br/>12 Q. Sure.<br/>13 A. Okay. I'm ready to talk.<br/>14 Q. Can you explain to me the bases of your<br/>15 opinion that the '328 patent is invalid due to the<br/>16 introduction of new matter?<br/>17 A. Yes. It's my understanding that the<br/>18 '328 patent was granted a priority date on the<br/>19 basis of the German application.<br/>20 It's further my understanding that in<br/>21 order to do that, the U.S. Patent has -- must not<br/>22 introduce any new matter over the old one to get<br/>23 that priority date.<br/>24 Q. The old one being the German one?</p>  |

15 (Pages 57 to 60)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 A. The old one being the German one.<br/> 2 During the German application, they<br/> 3 used -- the German application naturally was<br/> 4 written in German and it used the word<br/> 5 "aufnahmeteil." And that word presumably would<br/> 6 have been translated by the German-speaking Patent<br/> 7 Office correctly as "receptacle."<br/> 8 But when it got to the U.S. Patent<br/> 9 office, somehow that word became "cradle," and<br/> 10 that's -- I don't know whether it was for this<br/> 11 litigation or previously became cradle, but Braun<br/> 12 produced the translation that said that.<br/> 13 And then Braun produced another<br/> 14 translation that said it meant receptacle; and<br/> 15 that's confirmed, as I say here, by German<br/> 16 dictionary going both ways.<br/> 17 So, it seems to me that if the -- if the<br/> 18 German case is a receptacle, which in my view<br/> 19 retains liquid, the later American application<br/> 20 using the word "cradle," which has been construed<br/> 21 as not retaining -- not necessarily retaining<br/> 22 liquid, then that's -- it's somehow new. It's<br/> 23 different from what was previously applied for and<br/> 24 therefore should at least not receive the earlier</p> | Page 61 | <p>1 applications, receptacle is a basin where holy<br/> 2 water is kept. I think I'm correct there. A bowl<br/> 3 is often referred to as a receptacle. It's -- I'd<br/> 4 have to confirm it with the dictionary, but it's<br/> 5 the ordinary meaning to me.<br/> 6 Q. Have you confirmed your understanding of<br/> 7 receptacle with any technical dictionaries?<br/> 8 A. No.<br/> 9 Q. Any dictionaries at all?<br/> 10 A. No.<br/> 11 Q. Does "receptacle" have a special<br/> 12 technical meaning aside from what your<br/> 13 understanding of the ordinary usage of the word is?<br/> 14 A. It has some alternative meanings as many<br/> 15 words do. The electrical outlet on the wall that<br/> 16 I'm looking at over there is frequently referred to<br/> 17 as a receptacle.<br/> 18 Q. Does that receptacle receive and retain<br/> 19 fluid?<br/> 20 A. The electrical outlet in the wall? No.<br/> 21 Q. So, when you were speaking of<br/> 22 receptacles always receiving and retaining fluid,<br/> 23 you are speaking of receptacles, not electrical<br/> 24 receptacles.</p>  | Page 63 |
| <p>1 patent date, priority date.<br/> 2 Q. I guess that's what I don't understand.<br/> 3 It shouldn't -- if your argument is<br/> 4 true, it shouldn't receive the earlier priority<br/> 5 date, but why would the patent itself be invalid?<br/> 6 A. That's a -- that's a legal matter that<br/> 7 I'm really not qualified to speak on.<br/> 8 Q. Now, you had mentioned in your prior<br/> 9 answer that you had consulted German dictionaries<br/> 10 going both ways?<br/> 11 A. Yes.<br/> 12 Q. What did you mean by that?<br/> 13 A. Going from the -- from German to English<br/> 14 but then also taking the suggested English<br/> 15 alternatives -- English versions and going<br/> 16 backwards and seeing what they came out to be in<br/> 17 German.<br/> 18 Q. And you have stated that your -- in your<br/> 19 opinion a receptacle receives and retains fluid?<br/> 20 A. Yes.<br/> 21 Q. What is the basis for that opinion?<br/> 22 Does it -- go ahead.<br/> 23 A. It's as far as I know just the ordinary<br/> 24 meaning of the word. I think in some sacramental</p>   | Page 62 | <p>1 How do you distinguish between the<br/> 2 electrical outlet that doesn't receive and retain<br/> 3 fluid and the other set of receptacles that do in<br/> 4 your opinion?<br/> 5 A. Well, in the context, receptacle is not<br/> 6 a unique word. Many, many words in English have<br/> 7 multiple meanings that seem to have no relation one<br/> 8 to the other. How anyone learns English is a<br/> 9 mystery to me.<br/> 10 Q. It's my second language.<br/> 11 A. You do awfully well if it's your second<br/> 12 language. I would never have guessed.<br/> 13 Q. So, it's the fact that there are<br/> 14 multiple meanings to receptacle that you are<br/> 15 comfortable with your opinion that all receptacles<br/> 16 in this context receive and retain fluid?<br/> 17 A. Yes, I am comfortable with that.<br/> 18 Q. Turning your attention to Exhibit 1,<br/> 19 your first report, at paragraph 59 on page 21.<br/> 20 A. Yes.<br/> 21 Q. You describe a second basis for your<br/> 22 opinion that the patent is invalid for introduction<br/> 23 of new matter and that basis is the French patent?<br/> 24 A. Yes.</p> | Page 64 |

16 (Pages 61 to 64)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 Q. Can you explain to me why the<br/>2 introduction of the French patent in the '328<br/>3 patent application causes the patent to be invalid?<br/>4 A. Let me find the French patent.<br/>5 Q. It is included in Exhibit 4, tab 15.<br/>6 No, that's not right. It is Exhibit 5, tab 24.<br/>7 A. Thank you.<br/>8 Q. Try that again. I'm sorry. I think<br/>9 it's not included in your exhibits that I can see.<br/>10 Unfortunately I do not have it with me here.<br/>11 But if you were to look at it, what is<br/>12 it that you would be looking for?<br/>13 A. I have to see that patent.<br/>14 Q. I'm sorry.<br/>15 A. I have to see that patent to answer the<br/>16 question.<br/>17 Q. And have you seen that patent?<br/>18 A. I have, but I don't recall it very well.<br/>19 I need to refresh my memory.<br/>20 Q. Aside from the French patent, is there<br/>21 anything else that you've considered and consulted<br/>22 in forming your opinion that is not listed at tab 3<br/>23 of Exhibit 4?<br/>24 A. I don't believe so.</p>   | <p>Page 65</p> <p>1 Q. What is a wish list?<br/>2 A. The list of the things it has to do.<br/>3 Doesn't tell you how to do it. Has to dissolve<br/>4 fat. Fine. Well, it has to dissolve fats. It<br/>5 doesn't say how to dissolve the fat, what to use.<br/>6 So it's a wish list.<br/>7 Q. What is naphtha?<br/>8 A. Lighter fluid. It's a light<br/>9 hydrocarbon. Sort of like kerosene or paint<br/>10 thinner. Lighter than kerosene and similar to<br/>11 paint thinner.<br/>12 Q. And that is a cleaning fluid?<br/>13 A. Yes.<br/>14 Q. Fat-dissolving cleaning fluid?<br/>15 A. Yes.<br/>16 Q. Is that used in commercial applications?<br/>17 A. It used to be the dry cleaning fluid of<br/>18 choice before chlorinated solvents took over. It's<br/>19 dangerous. It's why they don't use it in dry<br/>20 cleaning anymore.<br/>21 Q. Why do you say it's dangerous?<br/>22 A. It's inflammable. But then so is<br/>23 alcohol in right conditions.<br/>24 Q. Another cleaning fluid you discuss in</p> |
| <p>1 Q. Mr. Phillips, you opine also that the<br/>2 patent, the '328 patent, is invalid for failure to<br/>3 disclose the best mode. Is that correct?<br/>4 A. That's correct.<br/>5 Q. And what is the basis of your opinion?<br/>6 A. The --<br/>7 Q. You can look at --<br/>8 A. The patent -- I have it here on page 22<br/>9 of the first report. And the problem is that the<br/>10 cleaning fluid was evidently important and it --<br/>11 than it's not disclosed at all in the patent. It<br/>12 just says cleaning fluid, and it describes what it<br/>13 has to clean. But it doesn't go into enough detail<br/>14 that a -- someone copying the invention would know<br/>15 what to use. It omits that important information.<br/>16 So, in that respect it is not taught the best mode.<br/>17 Q. When you say the cleaning fluid is not<br/>18 disclosed at all, you will admit that at least the<br/>19 cleaning fluid is described as fat dissolving,<br/>20 isn't it?<br/>21 A. As I say, it is described as it has what<br/>22 to do. It doesn't say how to do it or how to --<br/>23 more precisely what it has to be made of in order<br/>24 to do it. It's a wish list.</p> | <p>Page 66</p> <p>1 your report is a detergent mixed with water?<br/>2 A. Yes.<br/>3 Q. Could you explain to me how that is a<br/>4 cleaning fluid?<br/>5 A. Certainly. It's how you wash dishes.<br/>6 Q. Okay.<br/>7 A. I can explain in more detail, but I<br/>8 think you get the idea.<br/>9 Q. Yes. I've done that.<br/>10 In paragraph 46 of your third report,<br/>11 Exhibit 3.<br/>12 A. Paragraph what?<br/>13 Q. 46. Page 15.<br/>14 A. Okay. Thank you.<br/>15 Q. Your opinion is that it's<br/>16 counterintuitive to put lubricant in cleaning<br/>17 fluid. Do you see that?<br/>18 A. Yes, I do.<br/>19 Q. Why is that?<br/>20 A. Well, the lubricant is almost certainly<br/>21 going to be an oil and an oil and fat are very<br/>22 similar. Here you are taking the -- you're<br/>23 dissolving the oil or dissolving the fat and then<br/>24 you're adding more fat to it. It's not obvious</p>   |

17 (Pages 65 to 68)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 that that's a good thing to do.<br/> 2 In -- for instance, when you clean a<br/> 3 gun, you first get rid of all the oil and then you<br/> 4 come back later and oil it. It's a two-step<br/> 5 operation.<br/> 6 Q. Are you familiar with the Simmons<br/> 7 patent?<br/> 8 A. Yes.<br/> 9 Q. U.S. Patent 3,172,416.<br/> 10 A. Yes, I am. Can you point to it in the<br/> 11 report?<br/> 12 Q. I can. It's Exhibit 4, tab 7.<br/> 13 A. Yes, Simmons.<br/> 14 Q. Can you describe generally what the<br/> 15 Simmons patent discloses?<br/> 16 A. You put a shaver head -- a shaver upside<br/> 17 down in a -- well, cradle, for want of a better<br/> 18 word, in the top of the device, and then you<br/> 19 circulate a stream of variously air or liquid over<br/> 20 it with a pump and there is a filtration device in<br/> 21 it. So, it's a kind of vacuum cleaner or washer.<br/> 22 I think this one works with either air or liquid.<br/> 23 Q. And the Simmons patent was issued in<br/> 24 1965, is that right?</p>   | Page 69 | Page 71 |
| <p>1 A. Yes.<br/> 2 Q. Turning your attention to column 6,<br/> 3 lines 8 through 15. Mr. Simmons describes what he<br/> 4 describes as a suitable cleaning liquid --<br/> 5 A. Yes.<br/> 6 Q. -- for his device. Do you see that in<br/> 7 his suitable cleaning liquid he discloses the<br/> 8 addition of a wetting agent or a razor lubricant?<br/> 9 A. Yes, I do see that.<br/> 10 Q. Is it still your opinion that it would<br/> 11 be counterintuitive to add such a lubricant to<br/> 12 cleaning fluid for cleaning a shaving apparatus in<br/> 13 light of the 1965 disclosure of Mr. Simmons?<br/> 14 A. Well, I take your point. I think that<br/> 15 Simmons does disclose doing that. Slight<br/> 16 difference in the kinds of alcohol, but general<br/> 17 idea is certainly a solvent plus a lubricant in one<br/> 18 material.<br/> 19 Q. In paragraph 47 of your third report,<br/> 20 Exhibit 3.<br/> 21 A. Yes.<br/> 22 Q. You say that viscosity -- well, you say,<br/> 23 "It is my opinion that wetting and surface tension<br/> 24 would be of interest to one of ordinary skill in</p> | Page 70 | Page 72 |

18 (Pages 69 to 72)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 with respect to the other so you get an action of<br/> 2 thousands of tiny scissors. And that's the way<br/> 3 they work.</p> <p>4 And that mechanism I would call a<br/> 5 shaving head. Distinguishing it from the motor and<br/> 6 whatever electronics there might be.</p> <p>7 Q. But you just said that the shaving head<br/> 8 includes not only the cutter but a guard?</p> <p>9 A. Oh, it's the guard is a stationary part.</p> <p>10 Q. That's the stationary blade?</p> <p>11 A. Yes. That's the part that contacts your<br/> 12 skin.</p> <p>13 Q. So, the cutter is the moving blade and<br/> 14 the guard is the stationary blade?</p> <p>15 A. Yes, and you wouldn't want the moving<br/> 16 blade next to your skin. It would be way too<br/> 17 dangerous.</p> <p>18 Q. Because it might cut you?</p> <p>19 A. Yes. At least it would abrade your<br/> 20 skin.</p> <p>21 Q. In paragraph 72 of your third report,<br/> 22 Exhibit 3.</p> <p>23 A. Yes.</p> <p>24 Q. You state, "I intend to explain the hair</p>                   | Page 73 | <p>1 and they swap them out.</p> <p>2 They also -- that the heads come in<br/> 3 different finesses and they substitute one for<br/> 4 the other when they want to cut a different kind of<br/> 5 hair or cut more closely or cut farther away.</p> <p>6 Q. And have you seen barbers do this<br/> 7 swapping-out process?</p> <p>8 A. Yes.</p> <p>9 Q. When?</p> <p>10 A. Well, at the barbershop.</p> <p>11 Q. Just on your routine visits to the<br/> 12 barbershop you have seen that?</p> <p>13 A. Yes.</p> <p>14 Q. And the fineness differentiation, is<br/> 15 that when somebody says, "Give me a No. 4"?</p> <p>16 A. They come in numbers. You're right<br/> 17 about that. And the customer of course doesn't<br/> 18 know enough to ask for a No. 4 or whatever. But<br/> 19 the barbers routinely use different clippers on<br/> 20 your hair. They use two or three.</p> <p>21 And for whatever reason, though, when<br/> 22 you look at one of these clippers, you see how easy<br/> 23 it is to get the head off.</p> <p>24 Q. And with regard to the manual hair</p>                        | Page 75 |
| <p>1 clippers to the jury."</p> <p>2 A. Yes.</p> <p>3 Q. "And I have attached pictures at<br/> 4 Exhibit 39."</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. What is the explanation that you intend<br/> 9 to give to the jury?</p> <p>10 A. I plan to show them a -- both an<br/> 11 electric and a manual hair clipper and in the case<br/> 12 of the electric one, show how the head is very<br/> 13 rapidly and easily removed from the clipper body<br/> 14 and, in fact, is routinely done so by the barber.<br/> 15 It's probably easier than taking the head off an<br/> 16 electric shaver.</p> <p>17 Q. Why do you say it's routinely done so by<br/> 18 a barber?</p> <p>19 A. He changes the -- he changes the head.<br/> 20 He does it for a couple of reasons. He wants to --<br/> 21 well, barbers serve multiple customers, so<br/> 22 sterility and transmission of disease is of<br/> 23 interest to them. So, in theory they have some<br/> 24 heads being sterilized and some heads being used</p> | Page 74 | <p>1 clippers -- or was that the extent of your<br/> 2 presentation to the jury or your intended<br/> 3 presentation to the jury with regard to electric<br/> 4 clippers?</p> <p>5 A. I was probably going to show them a<br/> 6 manual clipper as well because some of this<br/> 7 equipment that is in the prior art is very old and<br/> 8 I wanted to have something that's comparable,<br/> 9 comparable in age.</p> <p>10 Q. And what were you going to show them<br/> 11 with regard to the manual hair clipper?</p> <p>12 A. I was going to show them that there was<br/> 13 such a thing and I was going to show how old it is<br/> 14 and I was going to show that even it is pretty easy<br/> 15 to get apart. It's not as easy as the electric but<br/> 16 it's pretty easy. No tools are required. Just<br/> 17 takes a little longer.</p> <p>18 Q. And how do you know how old the manual<br/> 19 hair clipper that you intend to show to the jury<br/> 20 is?</p> <p>21 A. Well, it's got a real old patent date on<br/> 22 it.</p> <p>23 Q. On the actual hair clipper?</p> <p>24 A. Yes.</p> | Page 76 |

19 (Pages 73 to 76)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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|--|---------|--|---------|
| <p>1 Q. Is that one of the patents that you've<br/>2 cited in your report?<br/>3 A. No, it isn't.<br/>4 Q. And how did you -- do you have one?<br/>5 A. Yes.<br/>6 Q. How did you obtain it?<br/>7 A. I bought it over the Internet.<br/>8 Q. When?<br/>9 A. Three, four, five months ago.<br/>10 Q. Is there any other explanation of hair<br/>11 clipper that you intend to give to the jury?<br/>12 A. I don't think so. I think that covers<br/>13 it.<br/>14 Q. Were you going to explain to the jury<br/>15 how the hair clipper works?<br/>16 A. To the extent I needed to. I think it's<br/>17 so obvious. It's very much like a razor, electric<br/>18 razor.<br/>19 Q. In cleaning a hair clipper or I should<br/>20 say in the patents that you've cited in connection<br/>21 with your opinion with regard to anticipation of<br/>22 the claims of the '328 patent --<br/>23 A. Yes.<br/>24 Q. -- some of them, and maybe all of them,</p>                                       | Page 77 | <p>1 photograph is in tab 39?<br/>2 A. Well, yes. The first and second are of<br/>3 the same thing.<br/>4 Q. Okay. What are the first and second?<br/>5 A. And the -- well, they are not terribly<br/>6 well presented here. The -- they are two views of<br/>7 it. They are the -- the first picture is the<br/>8 bottom side. The second picture is the top side.<br/>9 The one with the wing nut is the top side. And<br/>10 those -- you see two scissor-like handles. You see<br/>11 sort of knobs on the handles. Kind of like what<br/>12 you have riding sidesaddle to keep you from falling<br/>13 off. They help hold your fingers in position. The<br/>14 thing looks clumsy, but it works very well.<br/>15 Q. And this is the manual hair clipper that<br/>16 you intend to show to the jury?<br/>17 A. It is. It's got the patent number.<br/>18 Can't quite see it in these pictures. It's<br/>19 engraved in one of the handles. There are several<br/>20 lines of text stuck in there. But you have -- the<br/>21 picture is not good enough to tell.<br/>22 Q. Do you recall the vendor from whom you<br/>23 purchased this?<br/>24 A. Some barber in Atlanta I think.</p> | Page 79 |
| <p>1 disclose cleaning of hair clipper blades. Is that<br/>2 correct?<br/>3 A. They disclose what I will call<br/>4 generically as barber tools of various kinds and<br/>5 completenesses.<br/>6 Q. One of which barber tools is a clipper<br/>7 blade?<br/>8 A. Yes, it is.<br/>9 Q. And in connection with those patents do<br/>10 you consider the clipper blade as discussed in<br/>11 those patents to be the shaving head of the shaving<br/>12 apparatus?<br/>13 A. Yes, I do.<br/>14 Q. And do you consider those clipper blades<br/>15 to include both the cutter and the guard?<br/>16 A. Yes. I should say that they come apart<br/>17 as soon as you have them out of the head so you<br/>18 have -- you have individual pieces.<br/>19 Q. I will place what -- I'm going to place<br/>20 before you what has been previously marked as<br/>21 Phillips Exhibit No. 6 and ask you to turn to tab<br/>22 39 in that.<br/>23 A. Yes.<br/>24 Q. Can you tell me what that first</p> | Page 78 | <p>1 Q. Was he a vendor of hair clippers or this<br/>2 is the one he had?<br/>3 A. It's a -- it's a -- it's either a barber<br/>4 who is selling off his stuff or it's an antique<br/>5 dealer who is interested in barber things. I'm not<br/>6 real sure. I found a similar one in a catalog, a<br/>7 modern catalog, but I haven't bought it. I was<br/>8 only interested in that to see that they still made<br/>9 them, because when I told the lawyers, they didn't<br/>10 believe me that such a thing existed. So...<br/>11 Q. Now, to take apart the shaving head of<br/>12 this manual hair clipper, what would you need to<br/>13 do?<br/>14 A. You unscrew the wing nut and -- can you<br/>15 see the wing nut in the second picture?<br/>16 Q. Yes.<br/>17 A. There is a spring washer underneath it<br/>18 that is captive on it as I recall. And then the<br/>19 part that is towards you in the second picture,<br/>20 kind of a dome-shaped top, comes off and that<br/>21 reveals the moving blade and below that the<br/>22 stationary blade.<br/>23 And I forget exactly what you have to do<br/>24 then. I think you take the moving blade off. I</p>                   | Page 80 |

20 (Pages 77 to 80)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 don't really remember. But you wind up with the<br/>2 moving and stationary blades in your hand.<br/>3 Q. But that domed section is not the<br/>4 shaving head?<br/>5 A. Well, you might look on it as a retainer<br/>6 for the shaving head. You don't particularly have<br/>7 to clean it.<br/>8 Q. Then turning your attention to the next<br/>9 two photographs.<br/>10 A. Yes.<br/>11 Q. At tab -- or the next three photographs<br/>12 at tab 39.<br/>13 A. Yes.<br/>14 Q. What is that?<br/>15 A. That's an electric hair clipper.<br/>16 Q. Can you tell me what these photographs<br/>17 show?<br/>18 A. Yes. They are three views of --<br/>19 actually the third picture would be my choice of<br/>20 first picture because it shows the nameplate and<br/>21 that is the -- that's the barber's eye view of it.<br/>22 That's the top side.<br/>23 Q. Okay.<br/>24 A. I just wrapped the cord around it for</p>  | <p>Page 81</p> <p>1 Then when you put it back on, you can't<br/>2 see it in these pictures, the cutting head has a<br/>3 kind of slot built into it that mates with that<br/>4 lever and so you just insert the lever -- insert<br/>5 the blade over the lever and then snap it to the<br/>6 right clock-wise in that picture and it's ready to<br/>7 go.<br/>8 The moving part, you can just barely see<br/>9 it. There is a motor that's driving this thing.<br/>10 And in the second picture you see the shiny metal<br/>11 part to the right of the lever. You see sticking<br/>12 above it kind of a blackish thing.<br/>13 Q. Yes.<br/>14 A. That moves driven by the motor and it's<br/>15 arranged so that it drives the cutter head. And as<br/>16 you snap the head back on, you reengage that.<br/>17 Q. So, the head of the electric hair<br/>18 clipper is the -- what's shown detached?<br/>19 A. It's the detached part in the second<br/>20 picture, yes. And that's what the barber routinely<br/>21 changes. When you take it apart, you can see that<br/>22 it's got a number on it, there is a number one and<br/>23 a number two and different sizes.<br/>24 Q. What is the shaving head of an electric</p> |
| <p>1 safekeeping. The cord is not normally wrapped<br/>2 around it. And the first picture is kind of an<br/>3 oblique underside view and it shows the surface<br/>4 that contacts the customer's scalp. It's that sort<br/>5 of snow shovel-like appearance at the top of the<br/>6 picture.<br/>7 And then the second picture shows the<br/>8 head removed, and do you see that that pivoted arm<br/>9 that is sticking out below the -- what you might<br/>10 say in the chin position?<br/>11 Q. Yes.<br/>12 A. Okay. That is spring-loaded and the way<br/>13 you take it apart is turn to the first picture.<br/>14 You -- in that picture you hold the body of the<br/>15 razor in your right hand, you grasp the blade --<br/>16 the blade portion with your left hand, the cutting<br/>17 edge is put on the sides of them, sort of pinches<br/>18 between you. You pull it towards you, and it<br/>19 hinges around that bracket that's shown in the<br/>20 second picture against the spring pressure and it<br/>21 snaps to the position shown here and then you just<br/>22 withdraw the head. Couldn't be easier.<br/>23 Q. Snaps in the position shown in?<br/>24 A. In the second picture.</p> | <p>Page 82</p> <p>1 Page 84</p> <p>1 razor?<br/>2 A. It's the guard which -- well, I guess<br/>3 there are two principal kinds of electric shavers.<br/>4 There is the foil kind and there is the rotary<br/>5 kind. And the -- they are common -- they have some<br/>6 common concepts. They have a guard, which is a<br/>7 perforated plate.<br/>8 In the foil kind -- the whole idea in<br/>9 electric razors is to make the guard as thin as you<br/>10 can. So, the early electric razors didn't have --<br/>11 foil is a relatively recent invention. They use<br/>12 foils because they can be made thin.<br/>13 So, you have a perforated plate or foil<br/>14 or guard that through which the hairs hopefully<br/>15 protrude and which act as one of the two cutting<br/>16 blades. The inside of the hole is I'm not going to<br/>17 say sharpened but it's natively sharp.<br/>18 Q. It's, I'm sorry, natively?<br/>19 A. Yes. It comes that way. When you make<br/>20 the hole, it just is sharp.<br/>21 Q. The hole itself is sharp?<br/>22 A. The edges of the hole are sharp or you<br/>23 can cut against them. Just like the edge of a<br/>24 sheet of glass. While it is not intentionally</p>                |

21 (Pages 81 to 84)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 sharpened, it is sharp. I don't think they sharpen<br/>2 them individually. It would be hard to think of<br/>3 how they do that.</p> <p>4 And then the blade is reciprocated next<br/>5 to that -- next to the foil and one hopes cuts off<br/>6 the hairs that stick through the foil, and there<br/>7 are multiple blades all mounted in parallel.</p> <p>8 In the shavers I have looked at there<br/>9 are multiple blades side by side that are all<br/>10 reciprocated back and forth together. It's very<br/>11 much like a hedge trimmer. I keep using the hedge<br/>12 trimmer analogy because you can see it. It's big<br/>13 enough. You can see everything in it.</p> <p>14 You have -- you watch my fingers here.<br/>15 You will have multiple scissors in parallel.<br/>16 (Indicating). It's like that.</p> <p>17 In the rotary kind it's very similar.<br/>18 There is no foil. There is instead a kind of<br/>19 washer with slots in it and there is multi-pronged<br/>20 rotary cutter behind it, but the action is the<br/>21 same.</p> <p>22 It's scissor-like action. By<br/>23 scissor-like, I mean there are two blades that<br/>24 cooperate in cutting the hair or at least one of</p> | <p style="text-align: center;">Page 85</p> <p>1 A. I have it. This patent here?<br/>2 Q. That's right. Column 5.<br/>3 A. Yes.<br/>4 Q. Line 8 and 9. The patent says, "The<br/>5 inner cutter of the shaving head is activated" --<br/>6 A. Wait. 5 -- yes. I got it. The inner<br/>7 cutter, yes.<br/>8 Q. In the patent it seems that there is a<br/>9 distinction between the inner cutter and the<br/>10 shaving head. Do you see that?<br/>11 A. I do.<br/>12 Q. Do you make a distinction between the<br/>13 two?<br/>14 A. Well, no. I think the head includes the<br/>15 inner cutter and that's kind of confirmed by this<br/>16 where it says, "The inner cutter of the shaving<br/>17 head." The head -- the implication to me is that<br/>18 the head is an assembly, and in the shavers I have<br/>19 examined it is in fact an assembly.<br/>20 Q. Turning your attention to Exhibit 4, tab<br/>21 8.<br/>22 A. Tab?<br/>23 Q. 8, which is the McKinley patent.<br/>24 A. Yes.</p> |
| <p>1 them is a holder and the other is a cutter. Hard<br/>2 to say which is which.</p> <p>3 Q. And where does your understanding of the<br/>4 operation of a shaving head of an electric shaver<br/>5 come from?</p> <p>6 A. From taking them apart, looking at them.</p> <p>7 Q. When did you do that?</p> <p>8 A. Well, I've done it in connection with<br/>9 this case, but I recall it from the days when I had<br/>10 an electric razor.</p> <p>11 Q. You took your own electric razor apart?</p> <p>12 A. Oh, sure. You have to in order to clean<br/>13 it, which is the whole point of this invention as I<br/>14 understand it.</p> <p>15 Q. Why do you say you had to take it apart<br/>16 to clean it?</p> <p>17 A. Well, it's full of little tiny parts<br/>18 that trap the hairs. It's a big mess.</p> <p>19 Q. You see the point of this invention as<br/>20 not having to do that?</p> <p>21 A. That's right.</p> <p>22 Q. Now, in going back -- turning your<br/>23 attention to Exhibit 7 again, which is the '328<br/>24 patent, which I gave you a separate copy of.</p>  | <p style="text-align: center;">Page 86</p> <p>1 Q. U.S. Patent 3,365,267.<br/>2 A. Yes.<br/>3 Q. In the McKinley patent, what is the<br/>4 cradle structure adapted to receive the shaving<br/>5 head of a shaving apparatus?<br/>6 A. Well, let's see where I referred to it<br/>7 in my report.<br/>8 I see on page 30, paragraph 84, page 30<br/>9 of Exhibit 1. Exhibit 1.<br/>10 Q. Sorry. Okay?<br/>11 A. Got it?<br/>12 Q. Yes.<br/>13 A. I say there that the cradle structure of<br/>14 McKinley or the equivalent is the shelf 44 and the<br/>15 tank 12.<br/>16 Q. Is there anything else in McKinley that<br/>17 is the cradle structure adapted to receiving the<br/>18 shaving head of a shaving apparatus?<br/>19 A. Well, there is -- there is other parts<br/>20 involved. There is the magnets at 46.<br/>21 Q. And those magnets 46 support the clipper<br/>22 blades?<br/>23 A. Yes.<br/>24 Q. On rack 44?</p>  |

22 (Pages 85 to 88)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 A. Shelf 44, yes.</p> <p>2 Q. Shelf 44. Asking you to turn your<br/>3 attention to Exhibit 3, your third report, at<br/>4 paragraph 92.</p> <p>5 A. Yes.</p> <p>6 Q. You state, "The McKinley patent also<br/>7 discloses the cleaning of a razor 42."</p> <p>8 A. Yes.</p> <p>9 Q. "Razor 42 is held in slot 38 and<br/>10 received by tank 12"?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Is it your opinion that slot 38 is also<br/>15 a cradle structure?</p> <p>16 A. It's part of the cradle structure.</p> <p>17 Q. It's part of shelf 44 and tank 12?</p> <p>18 A. It's not entirely clear whether it's<br/>19 part of 44, but it's -- looks like it's more part<br/>20 of 34.</p> <p>21 Q. So, again, what is the cradle structure<br/>22 in the McKinley patent? Is it the combination of<br/>23 shelf 44, slot 38 and tank 12?</p> <p>24 A. It's everything on top of figure 1. So,</p>  | <p>Page 89</p> <p>1 would be the blade that arrow 64 is pointing to.</p> <p>2 Q. And that's in figure 3 of McKinley?</p> <p>3 A. Yes.</p> <p>4 Q. And what is it that receives the shaving<br/>5 head of the clippers?</p> <p>6 A. It's the magnets and the shelf. The<br/>7 magnet 46 and the shelf 44.</p> <p>8 Q. You had previously said it received the<br/>9 head assembly of the clippers?</p> <p>10 A. Yes.</p> <p>11 Q. Is that the cutter blades?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. The cutter -- just to clarify. The<br/>15 cutter blade is part of the head. Whether you take<br/>16 it apart or don't take it apart may be the barber's<br/>17 choice. It's very easy to do. He could easily do<br/>18 it either way.</p> <p>19 Q. I guess this is where I am confused.<br/>20 So, there is something called the head of a hair<br/>21 clipper that includes as a part of it the cutter<br/>22 blade?</p> <p>23 A. Yes.</p> <p>24 Q. And the other part of it is the guard?</p>  |
| <p>1 you have the tank 12 and you have the magnets 46<br/>2 and you have the shelf 44, you have the other shelf<br/>3 34 and you have features in 34, two of them are<br/>4 numbered 36 and 38. So, all of those collectively<br/>5 are the -- act to receive the shaving apparatus.</p> <p>6 Q. What is the shaving apparatus?</p> <p>7 A. Well, this one accepts at least two<br/>8 kinds of shaving apparatus. Accepts the straight<br/>9 razor and it accepts the cutter blade, the head<br/>10 assembly.</p> <p>11 Q. Of the clipper?</p> <p>12 A. Of the clippers.</p> <p>13 Q. What accepts the straight razor?</p> <p>14 A. This slot 38.</p> <p>15 Q. What is the shaving head of the straight<br/>16 razor?</p> <p>17 A. Well, the straight razor is so elemental<br/>18 that the head of it would be the -- the term was<br/>19 not used for straight razors but to -- there is<br/>20 only two parts of a straight razor. There is the<br/>21 blade and the case. And the case also doubles as a<br/>22 handle.</p> <p>23 So, the thing is constructed like a<br/>24 jackknife with one blade and the head therefore</p> | <p>Page 90</p> <p>1 A. That's what I'm calling as the guard. I<br/>2 don't know what else to call it.</p> <p>3 Q. Are there any other components to the<br/>4 head of a clipper blade?</p> <p>5 A. Well, in the -- the ones that I have<br/>6 seen have been the two that are disclosed so far in<br/>7 this case; and in the electric case the head shown<br/>8 detached in one of the photographs is two pieces,<br/>9 but one of those -- one or both of those pieces may<br/>10 in turn be made up of other pieces that you do not<br/>11 disassemble.</p> <p>12 Analogous to rivets that are permanent<br/>13 assembly. The manual clipper is similarly<br/>14 constructed. There are -- the parts are so<br/>15 complicated. They are small parts, but each of<br/>16 them is quite complicated -- it's a complex shape.</p> <p>17 Q. And so the cutter blade is -- consists<br/>18 of --</p> <p>19 A. The head consists of the cutter blade<br/>20 and the guard, but both the cutter blade and the<br/>21 guard may in turn consist of other parts but you<br/>22 can't get them apart.</p> <p>23 Q. Okay.</p> <p>24 A. So, for your purposes it's two pieces.</p> |

23 (Pages 89 to 92)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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|---|---|
| <p>1 There may be other parts, but I can't think of them<br/>2 now. Those are certainly the major ones, the ones<br/>3 you would want to clean.</p> <p>4 Q. Does the siphon in the McKinley patent,<br/>5 which I think is No. 24, is that correct?</p> <p>6 A. Well, it's -- there is two siphon-like<br/>7 objects. There is 24. And the other one is the<br/>8 feed pump. 24 is the siphon, that's correct.</p> <p>9 Q. Siphon 24, does that dry the barber<br/>10 tools that are cleaned or sterilized in the McKinley<br/>11 patent?</p> <p>12 A. It assists in the drying.</p> <p>13 Q. In Exhibit 3, your third report, at<br/>14 page 95.</p> <p>15 A. Yes.</p> <p>16 Q. You say, "Simply, without the siphon<br/>17 tube, the barbers' tools could not drip dry and the<br/>18 barber would need to dry them with, for example, a<br/>19 towel."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Does the siphon tube eliminate the need<br/>23 for a towel?</p> <p>24 A. Well, it lets them drip dry. Depends</p>                | <p>Page 93</p> <p>1 A. Because you need something to stop the<br/>2 razor from falling through. So, all together, they<br/>3 form both the cradle and the bracket.</p> <p>4 Q. So, tank 12 is part of the cradle but<br/>5 not part of the bracket?</p> <p>6 A. Yes, I think that's a fair statement.</p> <p>7 It cooperates with the bracket, but it's not part<br/>8 of the bracket.</p> <p>9 Q. And for your second shaving apparatus,<br/>10 the clipper, the hair clipper, what is the bracket<br/>11 for insertion of the hair clipper in the McKinley<br/>12 patent?</p> <p>13 A. The magnet, the magnet would be the<br/>14 equivalent.</p> <p>15 Q. Is the magnet a projecting support?</p> <p>16 A. It can be. I see how it's shown in this<br/>17 drawing.</p> <p>18 Q. Figure 3?</p> <p>19 A. Figure 3. And it's not entirely clear<br/>20 how it's done. If it is projecting, it's not<br/>21 projecting very far.</p> <p>22 Q. Staying with Exhibit 4, if you could<br/>23 turn to tab 9, the Davies patent, U.S. Patent<br/>24 3,478,758.</p>                  |
| <p>1 how quickly you need to reuse the tool. It will<br/>2 dry.</p> <p>3 Q. If you needed to use them right away,<br/>4 you would need to dry them in some way?</p> <p>5 A. That's right.</p> <p>6 Q. With a towel?</p> <p>7 A. With a towel or some other means, hair<br/>8 dryer, whatever.</p> <p>9 Q. In the McKinley patent what is the<br/>10 bracket for insertion of the shaving apparatus<br/>11 therein?</p> <p>12 Let's start with your first shaving<br/>13 apparatus, the straight razor. What is the bracket<br/>14 for insertion of the straight razor?</p> <p>15 A. Well, you have, once again, the shelf<br/>16 34, the slot 38 and magnets 46, although the<br/>17 magnets aren't related to the straight razor. But<br/>18 the shelf 34 and the slot 38 is -- are.</p> <p>19 Q. So, in your opinion the slot 38 and<br/>20 shelf 34 are both the cradle structure for the<br/>21 straight razor and the bracket?</p> <p>22 A. Well, the cradle also includes the tank.<br/>23 12, is that it?</p> <p>24 Q. Yeah, that's right.</p> | <p>Page 94</p> <p>1 A. Yes, I have it.</p> <p>2 Q. In the Davies patent what is the cradle<br/>3 structure adapted to receive the shaving head of a<br/>4 shaving apparatus?</p> <p>5 A. Just a moment, please.</p> <p>6 Q. Sure.</p> <p>7 A. Could I have the question again, please.</p> <p>8 Q. In the Davies patent what is the cradle<br/>9 structure adapted to receive the shaving head of a<br/>10 shaving apparatus?</p> <p>11 A. It's the tray 74.</p> <p>12 Q. What is the shaving apparatus?</p> <p>13 A. It's what -- it's shaving heads, razors,<br/>14 barber tools in general. The Davies is intended<br/>15 for any kind of sharp instrument. It's not limited<br/>16 to shaving equipment. It refers briefly to shaving<br/>17 equipment buried in the body of the patent, but<br/>18 it's intended to be a more versatile device.<br/>19 Perhaps a veterinarian might use it or a<br/>20 manicurist.</p> <p>21 Q. And at column 5 through 6, starting at<br/>22 line 73 of column 5.</p> <p>23 A. Yes.</p> <p>24 Q. The Davies patent says, "Also, two</p> |

24 (Pages 93 to 96)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 revolving brushes rotating in opposite directions<br/> 2 and spaced to receive hair clippers and other<br/> 3 instruments may be provided to remove hairs and<br/> 4 other particles from such instruments for cleaning<br/> 5 purposes"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see that?</p> <p>8 A. I do see that.</p> <p>9 Q. Is that the reference you were referring<br/> 10 to?</p> <p>11 A. Yes, it is.</p> <p>12 Q. In the Davies patent what is the feed<br/> 13 mechanism for feeding cleaning fluid from container<br/> 14 to tray 74?</p> <p>15 A. Well, in Davies, you have a -- you have<br/> 16 an external source of liquid and there is a tap in<br/> 17 the bottom of the tank, Item 80, and the liquid is<br/> 18 fed through that. So, that's the feed device.</p> <p>19 Q. Tap 80 is the feed device?</p> <p>20 A. Fitting 80 I think is the proper name<br/> 21 for it.</p> <p>22 Q. Fitting 80 feeds fluid from container 12<br/> 23 to tray 74?</p> <p>24 A. I'm trying to find 12. But I don't</p> | <p>Page 97</p> <p>1 IN THE UNITED STATES DISTRICT COURT<br/> 2 DISTRICT OF MASSACHUSETTS<br/> 3<br/> 4 BRAUN GmbH, )<br/> 5 Plaintiff, )<br/> 6 -vs- ) Civil Action No.<br/> 7 RAYOVAC CORPORATION, ) 03-CV-12428-WGY<br/> 8 Defendant. )<br/> 9<br/> 10 August 30, 2005<br/> 11 12:52 p.m.<br/> 12<br/> 13 The deposition of SAMUEL R. PHILLIPS<br/> 14 resumed pursuant to recess at the offices of<br/> 15 Kirkland &amp; Ellis LLP, Suite 5600, 200 East Randolph<br/> 16 Drive, Chicago, Illinois.<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24</p>   |
| <p>1 think it's 12.</p> <p>2 Q. Sorry.</p> <p>3 A. I think it's from outside. It's not<br/> 4 from anything. It's from some unnamed source.</p> <p>5 Yeah, it's not from 12. It's to 12. And 12<br/> 6 contains the tray 74 and that in turn is holding<br/> 7 the shaving apparatus.</p> <p>8 Q. Turning your --</p> <p>9 A. Excuse me a moment. I realize we had a<br/> 10 break not too long ago, but I'd like to do another<br/> 11 one.</p> <p>12 MS. WENDLANDT: Sure.</p> <p>13 MR. SHIMOTA: Do you want to break for lunch<br/> 14 now?</p> <p>15 THE WITNESS: Didn't mean to entirely break<br/> 16 the flow.</p> <p>17 MS. WENDLANDT: This is a good time.<br/> 18 (WHEREUPON, at 11:55 a.m. the<br/> 19 deposition of SAMUEL R. PHILLIPS<br/> 20 was recessed, to be reconvened at<br/> 21 12:40 p.m.)</p>   | <p>Page 98</p> <p>1 PRESENT:<br/> 2<br/> 3 ROPES &amp; GRAY LLP,<br/> 4 (One International Place,<br/> 5 Boston, Massachusetts 02110-2624,<br/> 6 617-951-7000), by:<br/> 7 MS. DALILA ARGAEZ WENDLANDT,<br/> 8 dwendladt@ropesgray.com,<br/> 9 appeared on behalf of the Plaintiff;<br/> 10<br/> 11 KIRKLAND &amp; ELLIS LLP,<br/> 12 (200 East Randolph Drive,<br/> 13 Chicago, Illinois 60601,<br/> 14 312-861-2336), by:<br/> 15 MR. JAMES A. SHIMOTA,<br/> 16 jshimota@kirkland.com<br/> 17 appeared on behalf of the Defendant.</p> <p>18<br/> 19<br/> 20 REPORTED BY: CORINNE T. MARUT, C.S.R. No. 84-1968<br/> 21<br/> 22<br/> 23<br/> 24</p> |

25 (Pages 97 to 100)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 SAMUEL R. PHILLIPS,<br/> 2 called as a witness herein, having been previously<br/> 3 duly sworn and having testified, was examined and<br/> 4 testified further as follows:<br/> 5 EXAMINATION (RESUMED)<br/> 6 BY MS. WENDLANDT:<br/> 7 Q. Welcome back.<br/> 8 A. Thank you.<br/> 9 Q. Mr. Phillips, I'm asking you to turn<br/> 10 your attention to Exhibit 4, tab 10, the Maatz<br/> 11 patent, U.S. Patent No. 3,500,840.<br/> 12 What is the cradle structure adapted to<br/> 13 receive the shaving head of the shaving apparatus<br/> 14 in the Maatz patent?<br/> 15 A. It's got -- it's got a rack with some<br/> 16 holes in it. It has a row of magnets and it has a<br/> 17 grid or perforated shelf. All of those serve as a<br/> 18 structure to receive shaving apparatus.<br/> 19 Q. Are you referring to the numbers 17, 16<br/> 20 and 15 in figure 2?<br/> 21 A. Yes. Yes.<br/> 22 Q. What is the shaving apparatus that rack<br/> 23 10 is adapted to receive? Rack 15. I'm sorry.<br/> 24 A. Unlike some of the previous --</p> | <p>1 Does the drain dry the barber tools?<br/> 2 A. It aids the drying. The tools dry<br/> 3 naturally in air, but without the drain they<br/> 4 wouldn't dry at all.<br/> 5 Q. What is the bracket for insertion of the<br/> 6 hair clipper apparatus in the Maatz patent?<br/> 7 A. The rack -- well, 15 is -- there is<br/> 8 nothing that identifies the racks specifically. 15<br/> 9 comes the closest. It's pointing to a hole in the<br/> 10 rack. That would be the bracket.<br/> 11 Q. The actual hole that the number 15 is<br/> 12 pointing to?<br/> 13 A. Well, 15 is pointing to a hole. There<br/> 14 is nothing pointing to the rack as a -- as a whole,<br/> 15 w-h-o-l-e. But the piece of metal that the hole is<br/> 16 in, that hole 15 is in, that's the rack. Would be<br/> 17 some different hole, one that was aligned with a<br/> 18 magnet would be the bracket.<br/> 19 Q. Can you explain that, what hole aligned<br/> 20 with the magnet?<br/> 21 A. Well, you would -- there would be a<br/> 22 hole -- a hole aligned -- the picture here shows<br/> 23 the magnets kind of spaced without relation to the<br/> 24 holes in the rack above them, but if you</p> |
| <p>1 previous -- the prior art we discussed previously,<br/> 2 it doesn't show any pictures of the tools being in<br/> 3 there, but scissors, razors, combs, all kinds of<br/> 4 barber tools.<br/> 5 Q. Are razors a shaving apparatus?<br/> 6 A. No.<br/> 7 Q. Combs?<br/> 8 A. No.<br/> 9 Q. But razors are?<br/> 10 A. Razors are.<br/> 11 Q. And is rack 15 adapted to receive the<br/> 12 shaving head of a clipper, hair clippers?<br/> 13 A. Maatz does not name clippers<br/> 14 specifically. The provisions, though, for<br/> 15 accepting them are the same as in some of the<br/> 16 patents we've discussed previously, namely, racks<br/> 17 and magnets. So, yes, it is adapted to holding the<br/> 18 heads of clippers.<br/> 19 Q. So, to hold the heads of a clipper you<br/> 20 would use magnet 16 and rack 15 together?<br/> 21 A. Certainly magnet 16. I think more<br/> 22 likely magnet 16 and the perforated tray 17<br/> 23 together.<br/> 24 Q. The Maatz patent discloses a drain.</p>   | <p>1 Page 102<br/> 2 specifically wanted to -- let me rephrase this.<br/> 3 Depending upon the shape of the shaver<br/> 4 head, you either would need a bracket or not and if<br/> 5 you needed one, the rack in which hole 15 is put<br/> 6 would be it.<br/> 7 Q. So, it's your understanding of the Maatz<br/> 8 patent that the rack in which hole 15 exists is a<br/> 9 bracket for insertion of, for example, the hair<br/> 10 clipper apparatus?<br/> 11 A. Well, for shaving apparatus.<br/> 12 Q. So, in your one example, one of the<br/> 13 shaving apparatuses was a hair clipper?<br/> 14 A. Yes, or a straight razor.<br/> 15 Q. Okay. Let's stick with the hair<br/> 16 clipper. What is the bracket for insertion of the<br/> 17 hair clipper apparatus in the Maatz patent?<br/> 18 A. It would be one of the holes in rack 15.<br/> 19 Q. And that would be the same with regard<br/> 20 to a straight razor?<br/> 21 A. Yes, probably be a different hole.<br/> 22 Q. Because?<br/> 23 A. Because they are different shapes or<br/> 24 sizes.<br/> Q. Is there in your opinion any difference</p>  |

26 (Pages 101 to 104)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 between cleaning something and sterilizing it?</p> <p>2 A. There is certainly some difference.</p> <p>3 Q. What is that difference?</p> <p>4 A. But it's clear that sterilizing is a</p> <p>5 form of cleaning.</p> <p>6 Q. So, in the Teknek case concerning the</p> <p>7 cleaning machine for sheet, sheets?</p> <p>8 A. Sheets.</p> <p>9 Q. Was that a sterilizing machine?</p> <p>10 A. No.</p> <p>11 Q. And why -- what is the distinction then?</p> <p>12 Are you saying sterilizing is a subset of cleaning?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay. And what distinguishes a</p> <p>15 sterilizing process from a cleaning process?</p> <p>16 A. Well, a sterilizing process bears the</p> <p>17 additional burden of killing any germs that are</p> <p>18 there but there is a lesser burden on removing</p> <p>19 particles. So you have a concept of clean dirt,</p> <p>20 which is exactly what you have in an operating</p> <p>21 room.</p> <p>22 Q. You have clean dirt in an operating</p> <p>23 room?</p> <p>24 A. Yes.</p>  | Page 105 | <p>1 you were referring to?</p> <p>2 A. Yes.</p> <p>3 Q. Can you explain to me how this is a</p> <p>4 cleaning as well as sterilizing process?</p> <p>5 A. Yes. The spraying process is a washing</p> <p>6 process. I'm familiar with its use for cleaning</p> <p>7 things.</p> <p>8 Q. And how does the spray in the Loeffler</p> <p>9 patent physically remove the dirt or particles?</p> <p>10 A. By dissolving some of the material and</p> <p>11 by impingement on the rest -- on other material.</p> <p>12 Q. What do you mean by "dissolving some of</p> <p>13 the material"?</p> <p>14 A. Well, depends what's in the -- in the</p> <p>15 sterilant, but conceivably there are solvents in</p> <p>16 there. It's perhaps alcohol-based. We don't</p> <p>17 really know. It just says sterilant or sterilizing</p> <p>18 liquid is probably what it says.</p> <p>19 Q. I believe at column 2, line 52 or 53 it</p> <p>20 says, "Spraying can 60, containing the sterilizing</p> <p>21 fluid."</p> <p>22 A. Yes. It also -- it also says -- no, I</p> <p>23 think your reference number is right.</p> <p>24 Q. And from that reference, you believe</p> | Page 107 |
| <p>1 Q. Why do you say that?</p> <p>2 A. Well, semiconductor clean rooms are</p> <p>3 where people really know how to clean and they are</p> <p>4 a lot more rigorously enforced than anything I have</p> <p>5 seen in a hospital. Their shoes, beard, hair nets,</p> <p>6 all those things are not well taken care of in an</p> <p>7 operating room.</p> <p>8 Q. So, an operating room is a sterile</p> <p>9 environment or sterilized environment but not</p> <p>10 necessarily clean?</p> <p>11 A. That's right. Now, sterilizing with a</p> <p>12 wet sterilant is intrinsically a cleaning process.</p> <p>13 Q. Why do you say that?</p> <p>14 A. You are washing. Physical removal of</p> <p>15 dirt unavoidably.</p> <p>16 Q. And how is the dirt removed when</p> <p>17 something is sterilized with a wet liquid?</p> <p>18 A. With washing it specifically. And in</p> <p>19 fact some of the prior art, there is sterilization</p> <p>20 with spraying on from a spray can.</p> <p>21 Q. Right. Let's turn to that. I think</p> <p>22 it's the Loeffler patent. Let me see what it is.</p> <p>23 It's tab 6 to Exhibit 4. U.S. Patent 2,976,552.</p> <p>24 Can you explain to me -- is this what</p> | Page 106 | <p>1 that conceivably it could contain solvents?</p> <p>2 A. Yes.</p> <p>3 Q. Spray can 60?</p> <p>4 A. Yes.</p> <p>5 Q. Is that something about which you are</p> <p>6 confident?</p> <p>7 A. It mentions -- it mentions in column 1,</p> <p>8 line 43 that the head of a clipper is cleansed in</p> <p>9 the device. It mentions cleansing again at line</p> <p>10 59. There may be other places.</p> <p>11 Q. Sticking with that first reference, the</p> <p>12 line is, "It is, in view of this, the further</p> <p>13 object of the invention to provide means for</p> <p>14 automatically applying a suitable sterilizing fluid</p> <p>15 to the head of the clipper each time it is cleansed</p> <p>16 in that device."</p> <p>17 You read that to be that the sterilizing</p> <p>18 fluid is doing the cleansing, or do you?</p> <p>19 A. It's assisting with the cleansing. I</p> <p>20 realize this device has a brush as an important</p> <p>21 part of it.</p> <p>22 Q. What is the function of the brush?</p> <p>23 A. The brush is to agitate the surface and</p> <p>24 cooperating with the liquid does the cleaning. Not</p>                  | Page 108 |

27 (Pages 105 to 108)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 just the dry brushing. It's a wet brushing, which<br/>2 is more thorough.</p> <p>3 Q. And so the brushes are carrying away<br/>4 some of these dirt particles?</p> <p>5 A. Yes, presumably they are falling on the<br/>6 floor of the device.</p> <p>7 Q. You also said in answer to my previous<br/>8 question that one of the ways the spray can is<br/>9 washing is that it impinges the rest of the<br/>10 material. You said it dissolves some and then it<br/>11 impinges on the other. What does that mean,<br/>12 impinging?</p> <p>13 A. Well, impacts. It's got a connotation<br/>14 of velocity in it. There is relative motion, which<br/>15 can dislodge small particles, perhaps those that<br/>16 the brush misses.</p> <p>17 Q. Do you know whether spray can 60<br/>18 includes solvents?</p> <p>19 A. No, I don't. I -- since probably the<br/>20 cheapest sterilizing fluid you could use would be<br/>21 alcohol of the various kinds, it's likely to be<br/>22 alcohol and the alcohols are solvents. So, there<br/>23 would be a combination of cleaning and sterilizing.</p> <p>24 Q. In this Loeffler patent, what is the</p> | <p>Page 109</p> <p>1 components that you just now named that are the<br/>2 feed device of the Loeffler patent?</p> <p>3 A. Well, the valve is a fluid feed device,<br/>4 but there are others. I'm not sure what your<br/>5 question is.</p> <p>6 Q. I guess my question is: Is it the valve<br/>7 alone that is the fluid feed device or is it the<br/>8 valve in conjunction with these three other<br/>9 elements, the compressed gas, the dip tube and the<br/>10 nozzle?</p> <p>11 A. It's in conjunction with the three other<br/>12 objects. Each of them is a fluid feed device.<br/>13 Collectively they are the fluid feed device.</p> <p>14 Q. What do you mean, "each is a fluid feed<br/>15 device"?</p> <p>16 A. Well, a component of a system is a part<br/>17 of a system.</p> <p>18 Q. But a component of a system isn't the<br/>19 system?</p> <p>20 A. I just said that. That's correct.</p> <p>21 Q. Okay. But you said that valve 75 is a<br/>22 fluid feed device?</p> <p>23 A. It's a.</p> <p>24 Q. Yes. It's a component of the fluid feed</p>   |
| <p>Page 110</p> <p>1 feed device for feeding cleaning fluid from spray<br/>2 can 60 to the cradle structure?</p> <p>3 A. The spray can has -- is charged at the<br/>4 factory with compressed gas and -- which you of<br/>5 course cannot see in the picture, but it's there.<br/>6 And there is a dip tube in the can and then a valve<br/>7 at the top of the can and then a spray nozzle which<br/>8 is visible. That's Item 76. And that combination<br/>9 is the feed device.</p> <p>10 So it's got four elements: The<br/>11 pressurized gas, the dip tube, the valve and the<br/>12 spray nozzle.</p> <p>13 Q. I'm sorry. The dipped?</p> <p>14 A. The dip tube.</p> <p>15 Q. Dip tube. Okay.</p> <p>16 A. It's not shown there, but that's the<br/>17 only way you can get liquid out of a spray can.</p> <p>18 Q. Asking you to turn your attention to<br/>19 Exhibit 3, your third report, paragraph 134.</p> <p>20 A. Yes.</p> <p>21 Q. You state, "The valve 75 is a fluid feed<br/>22 device"?</p> <p>23 A. Yes.</p> <p>24 Q. Is it the valve alone or the four</p>   | <p>Page 112</p> <p>1 device?</p> <p>2 A. Yes. That would be more complete.</p> <p>3 Q. In paragraph 135 on the next page, you<br/>4 conclude, "I continue to believe that the fluid<br/>5 level in the spray can will always be below the<br/>6 cradle structure during feeding."</p> <p>7 Can you explain that statement or what's<br/>8 the basis of your belief there?</p> <p>9 A. Upon -- the complete accuracy of that<br/>10 statement depends upon where the liquid level is in<br/>11 the can at the start, and I do not know the<br/>12 proportion of gas and liquid in the can. I don't<br/>13 know how full it is filled at the factory.</p> <p>14 Depending on the level that is filled,<br/>15 though, there is a level at which the -- with the<br/>16 geometric arrangement shown in the picture, the<br/>17 level of the liquid will be below and remain below<br/>18 the head of the clipper.</p> <p>19 Q. Going down to paragraph 138.</p> <p>20 A. Yes.</p> <p>21 Q. At page 39 you state, "The hair clipper<br/>22 in the Loeffler patent obviously has a center of<br/>23 gravity."</p> <p>24 A. Yes.</p> |

28 (Pages 109 to 112)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 Q. Have you calculated where the center of<br/>2 gravity would be --<br/>3 A. No.<br/>4 Q. -- in the Loeffler patent?<br/>5 A. No.<br/>6 Q. Turning your attention to Exhibit 6,<br/>7 which is Exhibits 38, 39, 40 and 41 to your<br/>8 reports.<br/>9 A. Thank you.<br/>10 Q. At Exhibit 40.<br/>11 A. Yes.<br/>12 Q. You have Mnller patent.<br/>13 A. Yes.<br/>14 Q. U.S. Patent 4,154,003.<br/>15 A. Yes.<br/>16 Q. I couldn't find the Mnller patent cited<br/>17 in your report, but I was wondering why it was<br/>18 included as an exhibit?<br/>19 A. It is cited but it's hard to find.<br/>20 Q. Okay.<br/>21 A. It is on page 41.<br/>22 Q. Of the third report?<br/>23 A. In the footnote. Yeah.<br/>24 Q. What is the proposition for which you</p>  | <p>Page 113</p> <p>1 owns its patents. So it's not very surprising.<br/>2 And what they have got is an impeller in<br/>3 there. It's -- the proposition is to augment the<br/>4 Salas information or the Salas prior art.<br/>5 Q. Okay. Mr. Phillips, do you dispute that<br/>6 each of the Rayovac cleaning systems that are<br/>7 accused of infringement in this patent litigation<br/>8 each include a cleaning fluid container?<br/>9 A. I don't dispute that.<br/>10 Q. And do you dispute that each of them<br/>11 include a structure that's arranged above the fluid<br/>12 level of the cleaning fluid in the container?<br/>13 A. I don't dispute that.<br/>14 Q. Do you dispute that each of them contain<br/>15 a drying device?<br/>16 A. They each contain a drying device.<br/>17 Q. Turning your attention to Exhibit 2,<br/>18 your second report.<br/>19 A. Yes.<br/>20 Q. At paragraph 79 of your report, you<br/>21 begin to describe what you refer to as acceptable<br/>22 non-infringing substitutes?<br/>23 A. Yes.<br/>24 Q. The first such substitute is a -- either</p>   |
| <p>1 are citing this patent for?<br/>2 A. That one can combine washing and drying<br/>3 in the same -- in the same device. They don't have<br/>4 to be separated.<br/>5 Q. What is the connection between that and<br/>6 this case?<br/>7 A. It's -- it's rebutting what some of<br/>8 Dr. -- what -- some of what Dr. Nayfeh says where<br/>9 he is talking about the -- that it's bad to have<br/>10 the cleaning fluid introduced into the drying<br/>11 device.<br/>12 Q. I see. And with regard to Exhibit 6,<br/>13 tab 41, which I believe is a Japanese abstract,<br/>14 patent abstract?<br/>15 A. Yeah.<br/>16 Q. And it may include the patent itself<br/>17 also. What is the proposition for which you are<br/>18 citing this patent?<br/>19 A. I don't recall right now.<br/>20 Well, at the bottom of page 44 in<br/>21 footnote 14 there is -- I think I mentioned earlier<br/>22 that there were such things as electric wet razors,<br/>23 and I knew that Panasonic is a leading maker of<br/>24 those and Panasonic is a brand of Matsushita who</p> | <p>Page 114</p> <p>1 one or two gas cleaning systems that Rayovac is<br/>2 currently developing?<br/>3 A. Yes.<br/>4 Q. What is the basis for your opinion that<br/>5 that gas cleaning system is a non-infringing<br/>6 substitute, an available non-infringing substitute?<br/>7 A. I understand that available means that<br/>8 it could be placed on the market in some short time<br/>9 without defining what short means. It doesn't mean<br/>10 that you can go and buy one today. But it means<br/>11 that Rayovac could manage its business so that you<br/>12 could go and buy one before too long, whatever "too<br/>13 long" means.<br/>14 Q. To conclude that Rayovac could place<br/>15 such a gas cleaning system on the market in a short<br/>16 time, whatever that time is, to whom did you speak?<br/>17 A. Mr. Chasen.<br/>18 Q. Anyone else?<br/>19 A. No. Well, I spoke to Mr. Shimota.<br/>20 Q. Anyone else at Rayovac?<br/>21 A. No one else at Rayovac.<br/>22 Q. And did you review any documents in<br/>23 connection with your opinion that the gas cleaning<br/>24 system is an available non-infringing substitute?</p> |

29 (Pages 113 to 116)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 A. Yes, I did.</p> <p>2 Q. Placing before you what I have marked as</p> <p>3 Phillips Exhibit 8, which is tab 37 to your report.</p> <p>4 Are those the documents that you reviewed in</p> <p>5 connection with forming your opinion?</p> <p>6 A. Yes, they are.</p> <p>7 Q. Did you review any other documents?</p> <p>8 A. I recall there were some -- some kind of</p> <p>9 test reports, some kind of written documents</p> <p>10 conditioned with these pictures, but I don't now</p> <p>11 see them. They were not very formal test reports,</p> <p>12 but I don't know where they are.</p> <p>13 Q. Well, the last two pages of the tab 37</p> <p>14 is a document entitled "Carbon Dioxide Rotary</p> <p>15 Shaver Cleaner Operating Instructions."</p> <p>16 Is that what you are referring to?</p> <p>17 A. I think there is more than that. But I</p> <p>18 don't see it here and I know that Mr. Shimota</p> <p>19 turned over to you everything that we had. So,</p> <p>20 maybe my memory is wrong.</p> <p>21 Q. Well, if you did see such test reports,</p> <p>22 do you still have a copy of them?</p> <p>23 A. Presumably I do. But everything I have</p> <p>24 like this I got from Mr. Shimota in the first</p> | <p>Page 117</p> <p>1 out.</p> <p>2 What he told me was he was developing a</p> <p>3 completely dry system and, as you know, in the art</p> <p>4 there are -- there are blower and vacuum systems</p> <p>5 designed to clean razors. His concept -- but all</p> <p>6 of them to date that I have -- that I know anything</p> <p>7 about involve a fan or blower or some</p> <p>8 electric-powered motive device.</p> <p>9 And his concept was to use compressed</p> <p>10 gas and while it could be done with an air</p> <p>11 compressor -- well, he mentions it here I see.</p> <p>12 He's got two kinds. One of them uses a</p> <p>13 miniature compressor and the other one uses CO2</p> <p>14 cylinders of the small kind, usually called</p> <p>15 Sparkletts cylinders. That is a trade name. It's</p> <p>16 "Spark" and then I-e-t-t-s, two Ts.</p> <p>17 Such cartridges have been adapted for,</p> <p>18 oh, pellet guns, starting small engines, all kinds</p> <p>19 of things, and are available in the market.</p> <p>20 Q. Have you seen Mr. -- either of</p> <p>21 Mr. Chasen's gas cleaning systems?</p> <p>22 A. No, only photographs and discussion with</p> <p>23 him on the phone while looking at the photographs.</p> <p>24 Q. Do the photographs tell you that it</p> |
| <p>1 place. So, it's --</p> <p>2 Q. It could just be that it was missing</p> <p>3 from the actual document we reviewed at Ropes &amp;</p> <p>4 Gray?</p> <p>5 A. Or it could be that I'm wrong. I just</p> <p>6 don't know which is which. I thought there were</p> <p>7 some documents that kind of look like this</p> <p>8 instruction but that they were more -- more</p> <p>9 test-oriented.</p> <p>10 Not trying to hold anything out on you</p> <p>11 here.</p> <p>12 Q. I just want to make sure we have</p> <p>13 everything.</p> <p>14 A. Right. We have what we have.</p> <p>15 MS. WENDLANDT: Jim, to the extent there are</p> <p>16 such test reports, if you could produce them, that</p> <p>17 will be great.</p> <p>18 MR. SHIMOTA: Sure. If there is anything we</p> <p>19 haven't produced, I will.</p> <p>20 BY MS. WENDLANDT:</p> <p>21 Q. What did Mr. Chasen tell you about the</p> <p>22 gas cleaning system that he was developing?</p> <p>23 A. Let me get my report in front of me here</p> <p>24 just to refresh my memory so I don't leave anything</p>  | <p>Page 118</p> <p>1 could be an effective cleaning system?</p> <p>2 A. Yes.</p> <p>3 Q. How do they show that?</p> <p>4 A. They showed some before and after</p> <p>5 pictures. Again, that's either him stepping</p> <p>6 through them with me on the phone -- well, you see,</p> <p>7 he has numbered the tests and there is a</p> <p>8 progression of development and as it proceeds</p> <p>9 through this progression, the after photographs get</p> <p>10 cleaner and cleaner.</p> <p>11 And I think he has some comparisons that</p> <p>12 I am not sure I can show them to you here. I think</p> <p>13 he has some comparisons that show after -- after</p> <p>14 wet cleaning to establish a benchmark. So, he's</p> <p>15 satisfied that the thing is doing a good job of</p> <p>16 cleaning.</p> <p>17 Q. What is the status of Mr. Chasen's gas</p> <p>18 cleaning system today?</p> <p>19 A. As far as I know it is ready to be</p> <p>20 turned into a product. Still a laboratory unit as</p> <p>21 far as I know, but the -- the heavy-duty</p> <p>22 engineering is done.</p> <p>23 Q. And these are -- that conclusion is</p> <p>24 based on your discussions with Mr. Chasen?</p>  |

30 (Pages 117 to 120)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 A. Yes.</p> <p>2 Q. Those discussions were prior to your<br/>3 submission of the second Phillips report?</p> <p>4 A. Yes, yes, it was.</p> <p>5 Q. Another non-infringing available<br/>6 substitute that you described in your report is<br/>7 elimination of the dryer.</p> <p>8 A. Yes.</p> <p>9 Q. Is elimination of the dryer something<br/>10 that Rayovac is currently developing?</p> <p>11 A. I don't -- I don't recall. I -- there<br/>12 are -- there are two things you can do about<br/>13 eliminating a dryer. You can just not have one or<br/>14 you can -- and take the penalty of a longer drying<br/>15 time. Or you can substitute some different means<br/>16 of drying such as induction heat, as Mr. Hoeser<br/>17 mentions.</p> <p>18 I understand that Braun has -- currently<br/>19 markets both kinds, that is, no dryer at all and an<br/>20 induction heating form of dryer in addition to the<br/>21 blower one that is in dispute here.</p> <p>22 I think Rayovac is contemplating the<br/>23 same things; but where it lies, I don't know.</p> <p>24 Q. And what is your basis of your belief</p>                | Page 121 | <p>1 Q. With regard to your non-infringing<br/>2 substitute involving the covers.</p> <p>3 A. Yes.</p> <p>4 Q. Which I think are on page -- well,<br/>5 paragraph 98 of your report.</p> <p>6 A. Yes.</p> <p>7 Q. Is that something that Rayovac is<br/>8 currently considering?</p> <p>9 A. I don't know the extent they are<br/>10 considering it. It's -- Rayovac did provide these<br/>11 sketches and Rayovac says it would be easy for them<br/>12 to do. And having looked at the sketches, I agree<br/>13 with them.</p> <p>14 Q. And who at Rayovac provided the<br/>15 sketches?</p> <p>16 A. They came to me through Mr. Shimota. I<br/>17 don't know where they came from in Rayovac.</p> <p>18 Q. Did you talk to anyone at Rayovac about<br/>19 the cover substitute?</p> <p>20 A. I might have talked to Mr. Chasen while<br/>21 I had him on the phone, but I don't remember it.<br/>22 Not much to talk about.</p> <p>23 Q. With regard to the non-infringing<br/>24 available substitute which would require</p>  | Page 123 |
| <p>1 that Rayovac is contemplating the same things?</p> <p>2 A. I don't think I talked to Mr. Chasen<br/>3 about that, but I talked to Mr. Shimota about that.</p> <p>4 Q. Have you seen any documents concerning<br/>5 the elimination of the dryer?</p> <p>6 A. No.</p> <p>7 Q. What were your discussions with<br/>8 Mr. Shimota about the elimination of the dryer?</p> <p>9 A. Just that they might -- that Rayovac<br/>10 might do it. Certainly be easy to do.</p> <p>11 Q. Why is the development of an induction<br/>12 heating device to dry -- I'm sorry. Start that<br/>13 again.</p> <p>14 Why is the introduction of an induction<br/>15 heating device to dry the shaver head easy to do?<br/>16 I'm not saying it's not. I just don't know.</p> <p>17 A. The one that I said was easy to do was<br/>18 take out the dryer entirely. The induction heater,<br/>19 it would take some development. It's by no means<br/>20 rocket science. There are plenty of people to help<br/>21 you design that.</p> <p>22 Q. But you haven't spoken to anyone at<br/>23 Rayovac who would be one of those people?</p> <p>24 A. No, I haven't.</p> | Page 122 | <p>1 elimination of the bracket in the Rayovac device.</p> <p>2 A. Yes.</p> <p>3 Q. To whom did you speak to with regard to<br/>4 that one?</p> <p>5 A. I don't think I talked to anybody about<br/>6 that. It's just that they could do it.</p> <p>7 Q. Why do you say they could do it?</p> <p>8 A. Well, there is so much precedent.<br/>9 Cordless telephone comes immediately to mind. The<br/>10 only thing the bracket does is -- it does two<br/>11 things. It adds stability and it adds electric<br/>12 power and both of those you can do with other<br/>13 devices that are well-known. I mean, I know of<br/>14 them and presumably Rayovac knows of them.</p> <p>15 Q. But you haven't spoken to anyone at<br/>16 Rayovac to confirm that?</p> <p>17 A. I don't believe I have.</p> <p>18 Q. And you haven't seen any Rayovac<br/>19 documents concerning this?</p> <p>20 A. No, definitely not seen any Rayovac<br/>21 documents.</p> <p>22 Q. Have you tested these what you call<br/>23 available non-infringing substitutes against any of<br/>24 the other claims in the '328 patent, that is, the</p> | Page 124 |

31 (Pages 121 to 124)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 ones that have not been asserted in this case?</p> <p>2 A. I don't think I have. I don't think</p> <p>3 I've paid any attention to the non-asserted ones.</p> <p>4 Q. Can I ask you to look at claim 9 of the</p> <p>5 '328 patent, which is Exhibit 7.</p> <p>6 A. All right.</p> <p>7 Q. As I read them, the only difference</p> <p>8 between claim 9 and claim 11, which is one of the</p> <p>9 asserted claims, is that claim 11 requires a drying</p> <p>10 device and claim 9 requires an electrical</p> <p>11 arrangement for temporarily operating the shaving</p> <p>12 head of the shaving apparatus and the feed device?</p> <p>13 A. Yes.</p> <p>14 Q. Is that your reading as well?</p> <p>15 A. Let me do my own comparison here.</p> <p>16 Q. Sure.</p> <p>17 A. Yes, I think you're reading this</p> <p>18 correct.</p> <p>19 Q. So, with regard to the non-infringing</p> <p>20 substitute which would eliminate the dryer, would</p> <p>21 that non-infringing substitute escape infringement</p> <p>22 of claim 9?</p> <p>23 MR. SHIMOTA: Objection; outside the scope,</p> <p>24 form.</p> | <p>Page 125</p> <p>1 A. Oh, assuming that.</p> <p>2 Q. Yes.</p> <p>3 A. If it didn't have the concave structure,</p> <p>4 the need for the outlet port disappears. I mean it</p> <p>5 says that the outlet port allows hair to drain.</p> <p>6 There is nothing to drain from -- I mean, that's</p> <p>7 entirely dependent upon the first element being the</p> <p>8 way it is. The minute you take the concave surface</p> <p>9 away, there is nothing to drain.</p> <p>10 Q. So, you couldn't have a cradle structure</p> <p>11 that wasn't concave that had an outlet port?</p> <p>12 A. I'm having a hard time of thinking what</p> <p>13 it might be.</p> <p>14 Q. So, the outlet port -- the existence of</p> <p>15 an outlet port to one of ordinary skill in the art</p> <p>16 would imply a concave cradle structure?</p> <p>17 A. Yes. Because if it's not concave, then</p> <p>18 it's plane or convex. I don't know what else it</p> <p>19 can be. Or it can be porous and, in any event,</p> <p>20 there is no particular need for a drain because the</p> <p>21 water will just run off.</p> <p>22 Q. Before our lunch break you had testified</p> <p>23 that you had taken apart a shaving head of a</p> <p>24 shaving apparatus during this case and also</p> |
| <p>1 BY THE WITNESS:</p> <p>2 A. Of course, I haven't reached an opinion</p> <p>3 on that. I'd have to study that a bit to see what</p> <p>4 the -- what the result would be.</p> <p>5 BY MS. WENDLANDT:</p> <p>6 Q. Do you know whether the -- any of the</p> <p>7 three Remington or Rayovac products accused of</p> <p>8 infringement in this case have an electrical</p> <p>9 arrangement that operates both the feed device and</p> <p>10 the shaving head?</p> <p>11 MR. SHIMOTA: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. No, I'm sorry, I don't know.</p> <p>14 BY MS. WENDLANDT:</p> <p>15 Q. Okay. Turning your attention back to</p> <p>16 claim 1 of the '328 patent, which is the -- one of</p> <p>17 the elements is a cradle structure with an outlet</p> <p>18 port.</p> <p>19 Isn't the dimension of the outlet port</p> <p>20 something that you would need to know in order to</p> <p>21 answer the question whether the cradle structure is</p> <p>22 able to retain cleaning fluid?</p> <p>23 Again, assuming that claim 1 did not</p> <p>24 have a concave cradle structure.</p>     | <p>Page 126</p> <p>1 previously in connection with cleaning --</p> <p>2 A. Yes.</p> <p>3 Q. -- your own shaving apparatus?</p> <p>4 A. Yes.</p> <p>5 Q. And at that time you said that the point</p> <p>6 of the invention here was that you wouldn't have to</p> <p>7 do that, that is, take it apart?</p> <p>8 A. That's my understanding of it. It's</p> <p>9 supposed to be convenient.</p> <p>10 Q. Where in the '328 patent, Exhibit 7, do</p> <p>11 you see that the point of the invention is to add</p> <p>12 this level of convenience to cleaning the shaving</p> <p>13 head?</p> <p>14 A. Would you repeat the question, please.</p> <p>15 Q. Sure.</p> <p>16 MS. WENDLANDT: Can you read back the</p> <p>17 question.</p> <p>18 (WHEREUPON, the record was read</p> <p>19 by the reporter as requested as</p> <p>20 follows: Q. Where in the '328</p> <p>21 patent, Exhibit 7, do you see that</p> <p>22 the point of the invention is to</p> <p>23 add this level of convenience to</p> <p>24 cleaning the shaving head?)</p>  |

32 (Pages 125 to 128)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p>1 BY THE WITNESS:</p> <p>2 A. Whereas I do not find those specific<br/>3 words, I find several references of storing the<br/>4 razor and of -- and of avoiding taking it apart.</p> <p>5 BY MS. WENDLANDT:</p> <p>6 Q. And what are those references?</p> <p>7 A. Well, let me go through it again and<br/>8 find them for you.</p> <p>9 Q. Sure.</p> <p>10 A. Column 2, line -- beginning with line 5,<br/>11 the inference I draw is that you don't want to take<br/>12 it -- don't want to remove the shaving head.</p> <p>13 Q. Okay.</p> <p>14 A. Since it's discussing an advantage over<br/>15 a prior art.</p> <p>16 Then there is -- there is -- I'm going<br/>17 to skip around a little as I remember them.</p> <p>18 It can be operated -- let's see. In<br/>19 column 4, at the top, there is some discussion of<br/>20 operating it while it's in the cleaner, and it has<br/>21 to be together for you to do that. I have to find<br/>22 the exact reference for you.</p> <p>23 I'm jumping back to the first page of<br/>24 the patent again. Well, he mentions a storage</p>   | Page 129   | <p>1 those are some.</p> <p>2 Q. Can you describe for me the process by<br/>3 which your reports were drafted; that is, did you<br/>4 write the initial draft? Who did that?</p> <p>5 A. I did write an initial draft and<br/>6 Mr. Shimota rewrote it and we had a number of<br/>7 meetings in which we would discuss aspects of the<br/>8 report. So, I've been over the report in<br/>9 considerable detail several times.</p> <p>10 Q. Were these meetings in person or<br/>11 telephonic?</p> <p>12 A. Typically in person.</p> <p>13 MS. WENDLANDT: If we could just take a<br/>14 five-minute break, I may be done.</p> <p>15 (WHEREUPON, a recess was had<br/>16 from 1:56 to 2:01 p.m.)</p> <p>17 BY MS. WENDLANDT:</p> <p>18 Q. You will recall that prior to the lunch<br/>19 break we spoke about the disclosure in the Simmons<br/>20 patent of a cleaning fluid that -- to which one<br/>21 would add a lubricant?</p> <p>22 A. Yes, I do recall that.</p> <p>23 Q. In light of that disclosure, do you<br/>24 still opine that it would be counterintuitive to</p> | Page 131 |
| <p>1 device, column 2, line 22, and it's associated with<br/>2 arrangement for operating it electrically.</p> <p>3 So, the cradle is configured as a<br/>4 cleaning dish, a drying dish and/or a storage<br/>5 device all together and all of that says to me you<br/>6 don't want to take it apart.</p> <p>7 Then around line 40, you ought to<br/>8 operate it after drainage. I'm sorry. That's<br/>9 something else. Forget that.</p> <p>10 At the top of column 3 he mentions more<br/>11 specifically the benefit of operating it while it's<br/>12 under water.</p> <p>13 Q. And from that benefit you infer that you<br/>14 don't take it apart?</p> <p>15 A. I do infer that. At the bottom of<br/>16 column 3, beginning about line 63, he talks again<br/>17 about storing it, perfect, well protected,<br/>18 indefinite period of time, locked in place.</p> <p>19 Again, the inference I draw, until -- he<br/>20 goes on the next one, "until the cleaning and<br/>21 drying operations are completed and the shaving<br/>22 apparatus is needed for a shave." Again, the<br/>23 inference is that it's together, not disassembled.</p> <p>24 There may be others, but that is --</p> | <p>1 one skilled in the art to add the lubricant to the<br/>2 cleaning fluid in the '328 patent?</p> <p>3 A. In light of that, no, I don't.</p> <p>4 MS. WENDLANDT: I have no further questions.</p> <p>5 MR. SHIMOTA: Okay. I have nothing.</p> <p>6 Signature is reserved.</p> <p>7 (Time Noted: 2:02 p.m.)</p> <p>8 FURTHER DEPONENT SAITH NAUGHT.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | Page 130  | Page 132 |

33 (Pages 129 to 132)

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| 1  | Page 133   | Page 135 |
| 2  | IN THE UNITED STATES DISTRICT COURT                |          |
| 3  | DISTRICT OF MASSACHUSETTS                          |          |
| 4  | BRAUN GmbH, )                                      |          |
| 5  | Plaintiff, )                                       |          |
| 6  | -vs- ) Civil Action No.                            |          |
| 7  | RAYOVAC CORPORATION, ) 03-CV-12428-WGY             |          |
| 8  | Defendant. )                                       |          |
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| 11 | I hereby certify that I have read the              |          |
| 12 | foregoing transcript of my deposition given at the |          |
| 13 | time and place aforesaid, consisting of Pages 1 to |          |
| 14 | 132, inclusive, and I do again subscribe and make  |          |
| 15 | oath that the same is a true, correct and complete |          |
| 16 | transcript of my deposition so given as aforesaid, |          |
| 17 | and includes changes, if any, so made by me.       |          |
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| 19 | SAMUEL R. PHILLIPS                                 |          |
| 20 | SUBSCRIBED AND SWORN TO                            |          |
| 21 | before me this day                                 |          |
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34 (Pages 133 to 136)